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ACCOUNTS AND PAPERS:

*TWENTY-EIGHT VOLUMES.*

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—(17. *PART I.*)—

INDEXES TO REPORTS.

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Session

*22 January — 28 August 1846.*

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41-1  
VOL. XLI.—PART I.

1846.

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BR - DOC - 650

ACCOUNTS AND PAPERS:

1846.

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TWENTY-EIGHT VOLUMES:—CONTENTS OF THE

SEVENTEENTH VOLUME. PART I.

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**TO**  
**R E P O R T S**  
**OR**  
**C O M M I S S I O N E R S,**  
**1810—1845.**

***(Law and Courts of Justice.)***

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*Ordered, by The House of Commons, to be Printed,*  
*21 August 1846.*

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Evidence of Mr. Bickersteth, with respect to the practice of the Court of Chancery as to plaintiffs requiring answers, *App.* 145—Opinion expressed by Mr. James Jones, in his evidence before the commissioners, that the process to compel answer cannot be conveniently shortened, *ib.* 160.

See also *Affidavits and Answers.*      *Amended Bills.*      *Contempt.*      *Evidence.*  
*Exceptions, 1.*

*Appeals.* Proposition of the commissioners, that the deposit made upon appealing from any decree or order of the court, or of obtaining a rehearing, be increased from 10*l.* to 20*l.*, *Rep.* 61—Proposition, that the Lord High Chancellor shall select ten or more persons out of the fourteen lists of commissioners of bankrupt acting in the execution of commissions in London, for the purpose of sitting as commissioners of appeal from the decisions of all London commissioners, *ib.* 63—Three of such persons, taken by rotation, shall sit once in each week, or oftener if necessary, at such hours as the Lord Chancellor may please to appoint, *ib.*—Proposition, that all matters which are now the subject of appeal to the Lord Chancellor, from the decisions of the commissioners acting in the execution of commissions in London, shall in future be first heard by the Commissioners of Appeal, *ib.*—They shall simply affirm or disaffirm the prior decision without stating particular conclusions, either as to matter of fact or matter of law, *ib.*—Proposition, that the Commissioners of Appeal shall proceed by *vivá voce* examination of witnesses, unless under special circumstances it should appear to them to be expedient to receive testimony by affidavit, *ib.*

Proposition, that the Commissioners of Appeal shall, in all cases brought before them, have a discretion to award such liquidated sum by way of costs to either party, as they shall think reasonable, *Rep.* 63—The costs so awarded shall be recoverable in like manner as costs awarded upon a petition in bankruptcy by the Lord Chancellor or Vice-Chancellor are recoverable, *ib.*—Proposition, that any party dissatisfied with the judgment of the Commissioners of Appeal shall be at liberty to review the same by petition before the Lord Chancellor, unless the subject of appeal be a matter of property under the value of 50 *l.*, *ib.*—Proposition, that all *vivá voce* evidence received by the Commissioners of Appeal shall be accurately taken down in writing, question as well as answer, by a proper officer to be appointed for that purpose, *ib.*—And that the Commissioners of Appeal shall, in respect of each appeal, be paid such fees only as by the present practice they are entitled to receive upon any public meeting under

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a commission, *Rep.* 64—Proposition, that when an order is pronounced by the Master of the Rolls or Vice-Chancellor upon a motion, or where they decline to make such order, no party shall be at liberty to appeal as at present from such order, by a motion to be made before the Lord Chancellor, *ib.*—And that no appeal to the Lord Chancellor from any decree or order made by the Master of the Rolls or the Vice-Chancellor be permitted, unless the petition for such appeal be presented within six months from the time of such decree or order pronounced, *ib.* 65—Observations by Mr. Beames on the proposition of the commissioners with respect to appeals from the decision of the Master of the Rolls or Vice-Chancellor, made in the hearing of a cause, or on further directions, *ib.* 110—Much inconvenience and injustice must obviously be the result of permitting a party dissatisfied with the judgment of the Master of the Rolls or Vice-Chancellor to appeal to the Lord Chancellor, at any distance of time, *ib.* 111, 112—Suggestions for the limitation of the time; period of limitation recommended, *ib.*

Evidence of Mr. William Cooke to show that there is no reason why parties appealing from the Vice-Chancellor to the Lord Chancellor, should have the right of appealing to the House of Lords afterwards, *App.* 130—Account specifying the names of the last 50 appeals presented to the House of Lords, from the decrees or orders of the Lord Chancellor, showing also the respective days on which such appeals were presented; and distinguishing those brought from the decision of the Lord Chancellor, in which the cause or matter had been previously heard and decided by the Master of the Rolls or Vice-Chancellor, *ib.* 1090—Rehearings and appeals before the Lord Chancellor, set down in various terms, from 1808 to 1825, *ib.* 1092—List of appeals and rehearings, heard and disposed of by the Lord Chancellor in each term and sittings, since the sittings after Hilary 1822, *ib.* 1098—List of rehearings and appeals depending and unheard before the Lord Chancellor, *ib.* 1101—Account of the days on which the House of Lords proceed in the hearing, consideration of appeals, or writs of error, or in giving judgment on those previously heard, or on which Committees for Privileges met; stating the names of the parties in the appeals or writs of error, specifying those heard or disposed of when the Lord Chancellor was present, or the Lord sitting as Speaker under His Majesty's Commission, and the names of the peerages, in the years 1823, 1824 and 1825, *ib.* 1103.

*Appearance.* Proposition of the commissioners with respect to the appearance of defendants, *Rep.* 39—Explanation with respect to the propositions of the commissioners after a defendant has entered his appearance, *ib.* 68—Also explanation with regard to their proposition in cases where any defendant, by virtue of any writ of habeas corpus, or other process, shall be brought into court, and shall refuse or neglect to enter his appearance, *ib.* 69—Observations of Mr. William Cooke, on some suggestions submitted to him with respect to the means of compelling the appearance of a defendant, in the first place, to a suit, *App.* 121.

*Assets.* Account of cash and securities belonging to the suitors in the High Court of Chancery, standing in the books of the Bank of England, in the name of the Accountant-general, on the 1st October 1823, *App.* 1145.

See also *Administration of Assets.*

*Assignees.* Evidence of Mr. Nathaniel Clayton, with a view to show how far the present mode of choosing assignees is a good one, with reference to the interest of the creditors, *App.* 421.

*Attachment, Writ of.* Proposition, that if a defendant be in contempt for want of an answer, and the writ of attachment be returned by the sheriff *non est inventus*, the plaintiff shall be at liberty to pass by the intermediate process of contempt, and to move at once for a serjeant-at-arms, *Rep.* 39—Proposition of the commissioners, that if the attachment be returned by *cepi corpus*, and the defendant be in prison, in the custody of the sheriff, it shall no longer be necessary for the plaintiff to remove him by habeas to the bar of the court, *ib.* 40—Also proposition, that if the attachment be bailed by the sheriff, and the defendant be by the subsequent process committed to the prison of the Fleet, there be 15 days between the return of the first habeas, and the return of the alias habeas, *ib.*—Remarks on the proposition of the commissioners, where the attachment is returned *cepi corpus*, and the defendant is in the prison of the King and the custody of the sheriff, *ib.* 70—And also where the attachment is bailed by the sheriff, and the defendant by the subsequent process committed to the prison of the Fleet, *ib.*—How far it would be useful, supposing a defendant to be in contempt for not answering, after the second insufficient answer, to make that attachment not bailable, *App.* 18.

*Attorney-general v. The Corporation of Bristol.* Evidence of Mr. Thomas Walker upon the hearing of the case of the Attorney-general v. The Corporation of Bristol, *App.* 493.

## B.

*Bank of England.* See *Accountant-General.*    *Assets.*    *Cash.*    *Securities.*

**Bankruptcy.** Inexpediency of transferring the jurisdiction in bankruptcy from the Lord Chancellor to some other tribunal, to be constituted for that purpose, *Rep.* 35-37—Opinions expressed by Mr. John Bell upon the practice of the Court of Chancery in matters of bankruptcy, *App.* 27—Evidence of Mr. William Cooke as to the decision of cases of bankruptcy occupying a very considerable portion of the time of the Court of Chancery, *ib.* 128—Evidence of Mr. William Horne to show that the bankruptcy business embraces questions which are peculiarly fitted for an equitable jurisdiction, *ib.* 369—And that this business could not be, advantageously to the public, transferred to any common law jurisdiction, *ib.*

Evidence of Mr. Basil Montagu respecting the mode in which the bankrupt laws are administered by the different lists of commissioners, *App.* 394—Also evidence to show that a tribunal so constituted is not well calculated to do the business that is committed to it, *ib.* 394. 397—And on the subject of the evils attendant upon the want of publicity in the proceedings of the commissioners, *ib.* 406.

Evidence of Mr. Nathaniel Ellison, as to the defects which have occurred to him in the practice; remedies suggested, *App.* 415—Evidence of Mr. Nathaniel Clayton to show how far the present mode of choosing assignees is a good one, with reference to the interest of the creditors, *ib.* 421—Evidence of Mr. George Roots as to the defects in the system of administering justice before the London Commissioners of Bankrupt, *ib.* 428—Suggestions of Mr. Roots as to the mode in which some of the mischief of the system may be prevented, *ib.*—Evidence of Mr. T. C. Glyn as to how far any alteration of the present constitution of Commissioners of Bankrupts would be desirable, *ib.* 435—Further answers on the same subject, delivered in as a written paper by Mr. Glyn, *ib.* 439—Evidence of Mr. Robert Grant, Commissioner of Bankrupts, respecting the practice in the court, *ib.* 463—Evidence of Mr. John Pensam, as to the Chancellor hearing matters in bankruptcy, *ib.* 499—Paper delivered in to the commissioners by Mr. Forster with respect to bankruptcy, *ib.* 584.

Account of the business in bankruptcy brought on for hearing before the Lord Chancellor, for three years, from the seal before Michaelmas Term 1822, to the seal before Michaelmas Term 1825, *App.* 1132—Paper delivered in by Mr. Pensam with respect to the business in bankruptcy, *ib.*—Account of the business in bankruptcy brought on for hearing before the Vice-Chancellor, for three years, namely, from the seal before Michaelmas Term 1822, to the seal before Michaelmas Term 1825, *ib.* 1136—Further paper delivered in by Mr. Pensam, with respect to the business in bankruptcy, *ib.*—Petitions in bankruptcy set down for hearing at different stated periods, *ib.* 1149—Bankrupt petitions heard and decided, or in which orders have been made by consent, in the four years from the petition-day after Trinity Term 1821, to the petition-day after Trinity Term 1825, *ib.*

See also *Appeals.*    *Commissioners of Bankruptcy.*

**Barnes, Ralph.** Solicitor, at Exeter; has had some experience in Chancery proceedings; evidence respecting the mode of examining witnesses in the country by commission, *App.* 382.

**Barons of the Exchequer.** See *Habeas Corpus.*

**Bell, John.** Evidence given on 26th June 1824, on the practice of the Court of Chancery generally, and as to what alterations might be usefully made in the form of Chancery pleading, *App.* 1. 9. 14. 20—Observations upon, and explanations of, former evidence, *ib.* 235. 245—Answers from Mr. John Bell to questions respecting the practice of the court, put to him upon his examination, delivered in writing, *ib.* 388—Further written answers from Mr. John Bell, delivered 3d June 1825, *ib.* 392.

**Bird, James.** Return of James Bird, clerk of the exceptions in the register's office in the Court of Chancery, and agent to the senior deputy register of the said court, to a requisition from His Majesty's commissioners for inquiring whether any and what alterations might be made in the practice established in the said court, or in the several offices of the said court, *App.* 570.

**Bickersteth, Henry.** Barrister in the Court of Chancery; evidence as to the various delays and expenses which are ascribed to the proceedings in the Court of Chancery, and proposal of some remedies for lessening or obviating these evils, *App.* 145—Further evidence taken 11th and 16th August 1824, upon the same subject, *ib.* 173. 209.

**Blower, Joseph.** Solicitor, practising in the Court of Chancery; evidence as to the practice in that court with regard to titles, *App.* 273.

**Bristol, Corporation of.** See *Attorney-general v. The Corporation of Bristol.*

*Birmingham, Thomas.* Has been second clerk to one of the Masters fourteen years; ordinary course with respect to granting warrants for the Master in witness's office, *App.* 376.

*Burrows, Henry.* Has been registrar to the Master of the Rolls since 1809; information as to the quantum of business which was dispatched during the last twelve months that Sir William Grant sat, and the first twelve months that the late Master of the Rolls sat, *App.* 497.

*Butt, William.* Deputy Serjeant-at-Arms attending the Great Seal; duties and emoluments of the office, *App.* 328.

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*Carr, Thomas.* Chancellor's secretary in matters of lunacy; account of the business done by the Chancellor in these matters from November 1822 to November 1825, *App.* 502 —Increase of the business in lunacy of late years, *ib.* 503—Paper delivered in by Mr. Carr with respect to lunacy business in the Court of Chancery, *ib.* 1139.

*Cash.* Account of cash and securities belonging to the suitors of the High Court of Chancery, standing in the books of the Bank of England in the name of the Accountant-general, on the 1st October 1823, *App.* 1145.

*Cause Papers.* It sometimes happens, through the inadvertence or omission of the plaintiff, that the cause is not in a fit state to be heard when it is called on, *Rep.* 85 —It then goes out of the paper, and it becomes necessary to set it down a second time, and to serve new subpoenas to hear judgment, *ib.*—As the defendant is in no default, he ought to have the costs occasioned by the first setting down and calling on of the cause, although he should not in the result obtain the general costs of the suit, *ib.*—It sometimes occurs that a cause which is called on is not decided, but it does not go out of the paper, being adjourned only upon payment by the plaintiff to the defendants of the costs of the day, *ib.*—Proposition of the commissioners on this subject, *ib.* 47—Remarks upon this proposition, *ib.* 85.

Evidence of Mr. Thomas A. Raynsford as to the Lord Chancellor being engaged, on the days for which the cause papers are made out, in doing business which does not appear in the paper, *App.* 494—Daily papers, containing causes before the Lord Chancellor and Vice-Chancellor respectively, from the first seal before Michaelmas Term 1822 to the last day of the sittings after Trinity Term 1825, both inclusive, *ib.* 633 —Daily papers, containing causes, rehearings, &c. before the Master of the Rolls, from Michaelmas Term 1822 to Trinity Term 1825 inclusive, *ib.* 894.

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## CHANCERY, COURT OF:

1. *Defects in the present Practice of the Court.*
2. *Alterations and Amendments suggested.*
3. *Opinion that no material Alterations could be beneficially made.*

1. *Defects in the present Practice of the Court:*

Owing to the circumstances under which the Court of Chancery was first established, there are in the system some defects which may now be corrected, *Rep.* 8—Abuses have crept in which an alteration of the practice may remove, *ib.* 8, 9—Paper submitted to the Commissioners by Mr. William Whitten, in reply to questions put to him in the course of his examination as to the various practices in the Court of Chancery, *App.* 184—Evidence of Mr. George Boone Roupell, as to the inconveniences arising from the present practice of the court, *ib.* 331—Answers from Mr. John Bell to questions respecting the practice of the Court of Chancery, put to him upon his examination, delivered in, *ib.* 388—Further answers from Mr. John Bell, delivered in, *ib.* 392—Evidence of Mr. T. C. Glyn, upon the prominent defects in the present system of practice in the Court of Chancery, *ib.* 483.

2. *Alterations and Amendments suggested:*

Opinion of the commissioners, that some alterations in the practice of the court may be safely proposed, and beneficially adopted, *Rep.* 8—Evidence of Mr. John Bell, on the practice of the Court of Chancery generally, and as to what alterations might be usefully made in the form of Chancery pleadings, *App.* 1—Evidence of Mr. William Vizard, as to what alterations may be beneficially made in the present practice, upon various points, in the Court of Chancery, *ib.* 29. 40. 53—Evidence of Mr. Thomas Hamilton, with respect to the different stages of a suit in chancery, *ib.* 87. 100—Evidence of Mr. Lancelot Shadwell, as to the beneficial alterations which might be made in the practices of the Court of Chancery, *ib.* 190. 205—Paper delivered in by Mr.

## CHANCERY, COURT OF—continued.

2. *Alterations and Amendments suggested*—continued.

Mr. Rowland Wimburn, containing observations on the state of the practice in the Court of Chancery, with a view to some alterations and improvements that may be made in it, *App.* 224—Further observations of Mr. Wimburn, on the same subject, delivered in, 231.

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3. *Opinion that no material Alterations could be beneficially made :*

Evidence of Mr. James Lowe, in support of the opinion that no material alterations could be made in any branch of the actual practice of the court, by which delay or expense could be saved, *App.* 160.

See also *Bankruptcy. Delays. Lord Chancellor. Interlocutory Proceedings.*

*Charity Courts.* Paper delivered in to the commissioners by Mr. Forster, with respect to charity Courts, *App.* 582.

*Clayton, Nathaniel.* Practising barrister in the Court of Chancery, and has been a Commissioner of Bankrupts 10 years and upwards; evidence as to how far the present mode of choosing assignees is a good one with reference to the interest of the creditors, *App.* 421—Further examination on the same subject, *ib.* 487.

## CLERKS IN COURT:

1. *How far the Intervention of the Clerks in Court adds to the Delay and Expense of a Suit.*
2. *Opinion of the Commissioners that no material Delay nor Expense arises from such Intervention.*
3. *Suggestions for the Abolition of some of their Fees.*
4. *Service of Notices on Clerks in Court.*
5. *Papers laid before the Commissioners.*

1. *How far the Intervention of the Clerks in Court adds to the Delay and Expense of a Suit :*

Increase of delay and expense is supposed by many persons to arise from the intervention of the class of officers known by the name of clerks in court, *Rep.* 33—How far it would be useful to establish officers, distinct from the solicitors, for the performance of all those duties which are now performed by the clerks in court, *ib.*—For that part of their duties which regards the records of the court, separate officers must at all events be established, *ib.*

Evidence of Mr. William Vizard as to the way the establishment of clerks in court is, or is not, useful in the progress of a cause, *App.* 29—Also with respect to the practice or rule in court, as to the employment and payment of clerks in court, *ib.* 43—Considerable amendments might be made in the expense and delay of suits in the Court of Chancery, occasioned by the intervention of clerks in court, *ib.* 84—Evidence of Mr. Richard Mills as to how far the clerks in court add to the delay of a suit, *ib.* 319.

2. *Opinion of the Commissioners that no material Delay nor Expense arises from such Intervention :*

No material delay or expense arises from the intervention of the clerks in court, *Rep.* 33—The existence of these officers tends to secure a degree of regularity and uniformity of practice, which could not be obtained without them, *ib.*—There is no sufficient ground for any alteration respecting them, *ib.*

3. *Suggestions for the Abolition of some of their Fees :*

Suggestion that the fee charged for an attendance in court, which never takes place, ought to be abolished, *Rep.* 33—The clerks in court do not discharge any duty in return for the fee of 3 s. 4 d., which by the Order of 26th February 1807, is allowed them, expressly “for every day a cause is in the paper for hearing” (*Ord. Ch. Ed. Beam.* 474), *ib.* 102—As this therefore is a fee without duty, it should be no longer allowed them, *ib.*—The same observation applies to the fee of 6 s. 8 d., which by the same Order is allowed them “for every day a cause, appeal, rehearing, or further directions shall be in hearing, or in the paper after part heard,” *ib.*

## CLERKS IN COURT—continued.

4. *Service of Notices on Clerks in Court :*

The parties in a cause, plaintiffs and defendants, are always represented by their clerks in court, upon whom service is good in all cases, with the exception of such cases as require personal service, *Rep.* 107.—Difficulty of serving persons with a notice whose residence is unknown, or who reside in the country, and who, not being parties in the cause, are not represented by a clerk in court, *ib.*—Service upon the solicitor in London should be deemed efficient service upon such parties, *ib.*

5. *Papers laid before the Commissioners :*

Return from Mr. Jackson, one of the clerks in court, in answer to the request of the commissioners, that Mr. Jackson would send them a written statement, fully explaining the nature of the duties of his office of sixty clerk, in all its details, *App.* 550.—Analysis of a clerk in court's bill, with observations, *ib.* 571.—Papers delivered in by Mr. Vizard, being an analysis of clerks in courts' bills, *ib.* 571. 576.

See also *Amended Bills.*

*Clerks in the Masters' Offices.* Proposition that the practice of receiving gratuities by the clerks in the offices of the Masters of the court should be discontinued, *Rep.* 54.—In lieu thereof a liberal remuneration should be secured to them, bearing a just proportion to the business actually done by them, *ib.* 55.

*Commissioners of Bankruptcy.* Proposition that no London Commissioner of Bankrupt shall be at liberty to act as counsel for any party, either before the general commissioners acting in the execution of a commission, or before the commissioners of appeal proposed to be appointed, *Rep.* 64.—See also *Appeals.* *Bankruptcy.*

*Committees for Privileges.* Account of the days in which the House of Lords proceeded in the hearing or consideration of appeals or writs of error, in giving judgment on those previously heard, or on which Committees for Privileges met, *App.* 1103.

*Common Law Courts.* The proceedings in the courts of common law are simple, and generally founded on certain writs of great antiquity, conceived in prescribed forms, *Rep.* 6.—In progress of time, cases arose in which full justice could not be done in the courts of common law, according to the practice then prevailing, *ib.*

*Compromises.* When causes which are compromised, abated, or disposed of, get into the paper, have the effect of excluding others which are ripe for hearing, *Rep.* 85.—Suggestions for the prevention of this, *ib.*

*Conduct of Suits.* The Court of Chancery has established certain rules of practice, by which the conduct of suits is to be regulated, *Rep.* 8.—Fear expressed by the commissioners that such rules, framed as they are for general application, may in some cases be ineffectual, and in others operate harshly, *ib.*

*Contempt.* According to the existing practice, all writs forming part of the process of contempt, may in town causes be made returnable immediately in vacation, *Rep.* 80.—If a defendant is in contempt for want of an answer, and then files his answer, he is entitled to an order to be discharged out of custody upon payment or tender of the costs of contempt, *ib.*—Propositions of the commissioners on this subject, *ib.* 44.—Explanatory remarks upon these propositions, *ib.* 80, 81.—Evidence of Mr. John Bell, with a view to improving the practice of the court in cases where a defendant is in contempt for want of an answer, *App.* 25.

*Conveyancing.* Many suits owe their origin to, and many others are greatly protracted by questions arising from the niceties and subtleties of the law and practice of conveyancing, *Rep.* 34.—Any alteration in this system must be made with the greatest caution, *ib.*—How far it might be proper to commit to competent persons the task of examining this part of our law, with a view to determining if any improvement might safely be made in it, *ib.*

*Cooke, William.* Barrister: observations which have occurred to witness, on some suggestions submitted to him, with respect to the means of compelling the appearance of a defendant, in the first place, to a suit, *App.* 121.—Paper on this subject, delivered in, *ib.* 578.

*Copies of Proceedings.* Proposition that no party be required to take any copy from the Master's office, unless where necessary for the due proceeding in the matter depending, *Rep.* 54.—The Master's judgment in this respect should be final, *ib.*—Evidence as to the expense arising from the multiplicity of copies of bills necessary to be taken according to the present practice of the court, *App.* 14.—Evidence as to the difficulties arising in obtaining a copy of the minutes of an order or decree, *ib.* 73.—Evidence of Mr. Thomas Hamilton, as to the general incorrectness of the copies of the minutes of proceedings in the court, *ib.* 100.

COPY



**COPY MONEY:**

1. *Proposition that the Masters should cease to receive Profit from Copy Money.*
2. *How far Suitors should continue to pay Copy Money.*
3. *Papers laid before the Commissioners.*

1. *Proposition that the Masters should cease to receive Profit from Copy Money:*

Proposition, that it is expedient that the Masters should cease to receive profit from copy money, *Rep.* 54—And “that it is desirable that the Lord High Chancellor, the Master of the Rolls, and the Vice-Chancellor should take into consideration the present state of the emoluments of the masters, and also of their clerks,” *ib.* 55—The same parties should thereupon suggest what shall appear to be reasonable with respect to the future emoluments of the masters and clerks, *ib.*—And also the effect which will be produced by taking from them the profit of copy money, *ib.*

2. *How far Suitors should continue to pay Copy Money:*

Proposition, that it is expedient that the suitors in the Court of Chancery should continue to pay reasonable fees for copies and proceedings in the Master’s offices, *Rep.* 54—And that in future all copies in the Master’s office be paid for at the rate of 4 *d.* per folio only, *ib.*—Also proposition, that in the taxation of costs, no person be allowed the costs of the copy of any paper unless either made in the Master’s office, or transcribed from a copy made therein, *ib.*

3. *Papers laid before the Commissioners:*

Return from Mr. James Lammin, chief clerk to one of the Masters, as to the amount of copy money, received by him, upon an average of the three years preceding 1825, and also the amount of his salary and other emoluments, *App.* 564—Return from Mr. William Jones, on the same subject, *ib.* 567—Return of Mr. John Pugh, chief clerk to one of the Masters, as to the amount of copy money received by him upon an average of the three years preceding 1825, and also the amount of his salary and other emoluments, *ib.* 563—Also return from Mr. John Hone, on the same subject, *ib.*—And also from Mr. G. Munday, *ib.* 569.

**COSTS:**

1. *Generally.*
2. *Propositions of the Commissioners with respect to Orders for payment of Costs.*
3. *Propositions with respect to payment of Costs by Persons not Parties to Suits.*
4. *Proposed Increase in the Amount of Security to answer Costs.*
5. *Paper delivered in to the Commissioners.*

1. *Generally:*

Consideration of the commissioners as to the means by which the costs incurred in suits in the Court of Chancery may be reduced, *Rep.* 9—Proposed new rules as to the costs to be allowed in various cases, *ib.* 33—The principle of these rules is to bring the costs awarded to a successful party as nearly as may be to the amount of the costs properly incurred by him, *ib.*

During a long period of time the costs between party and party have borne no proportion to the costs between solicitor and client, *Rep.* 103—The former being regulated by a strict rule, conceding in many cases only a very inconsiderable portion of the sums actually expended, *ib.* 104—This leaves therefore to the successful party the burthen of a considerable portion of such expenditure, whilst the proper costs between solicitor and client approach in most instances to a fair remuneration for skill and trouble, and a just reimbursement of actual disbursements, *ib.*—Difficulty of discovering the abstract justice of this rule, *ib.*—Principle recommended to be applied in the taxation of costs with a view to remedying this evil, *ib.*

2. *Propositions of the Commissioners with respect to Orders for payment of Costs:*

Propositions of the commissioners with respect to cases where the plaintiff is directed to pay to the defendant the costs of the suit, *Rep.* 43, 44—Proposition, that upon all orders for payment of costs, the party to pay the costs shall at the same time also pay the further costs occasioned by the process to enforce such payment, *ib.* 60—And that where a writ of execution of a decree or order is duly issued, the party charged by such decree or order shall pay the costs of such writ, *ib.*—According to the present practice, if a party is entitled to the benefit of an express order for payment of costs, and is put to the necessity of suing out process to compel the payment of such costs, he must himself bear the expense of such process, *ib.* 104—Injustice of this practice; remedy suggested, *ib.*



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Proposition, that whenever costs are ordered to be paid by a person who is not a party to a cause, the payment of such costs shall be enforced by subpœna and attachment, *Rep.* 60—If costs are ordered to be paid by a person not a party to the suit, the mode of compelling payment is to obtain an order, *ib.* 105—If that order be disobeyed, a second order is applied for, which directs the party to pay within a certain time, or stand committed, *ib.*—If this order be also disobeyed, a third is obtained by an absolute order for committal, *ib.*—In cases where the person to pay is a party to the suit, the subpœna and attachment are alone necessary, *ib.*—There is no satisfactory reason why this more expeditious and less expensive course should not be had recourse to against a person not a party in the suit, *ib.*

4. *Proposed Increase in the Amount of Security to answer Costs :*

Proposition, that the penal sum in the bond given as a security to answer costs, in a suit where the plaintiff is out of the jurisdiction of the court, shall be increased from 40 *l.* to 100 *l.*, *Rep.* 60—When the plaintiff is out of the jurisdiction of the court, the defendant is entitled to require a security for the costs of the suit, should the plaintiff ultimately fail, *ib.* 105—Observations of Mr. Beames in his explanatory papers on the adoption by the commissioners of the opinion expressed by Lord Hardwicke, that, regard being had to the decreased value of money, the security should be increased from 40 *l.* to 100 *l.*, *ib.*—Evidence of Mr. Bell with respect to the expediency of increasing the amount of security for costs by a plaintiff who is abroad, *App.* 23.

5. *Paper delivered in to the Commissioners :*

Paper delivered in by Mr. Mills, being bill of costs of a plaintiff in a suit for foreclosure, *App.* 605—The defendant held out every obstacle, and it was precisely four years from the filing of the bill to the period of making the foreclosure, *ib.*

See also *Appeals.*    *Contempt.*    *Demurrers.*    *Foreclosure.*

*Counsel.* Proposition of the Commissioners limiting the number of counsel, *Rep.* 32—

Proposition, that being in the power of the court to order a further argument where it shall appear expedient, no more than two counsel shall be heard for each party, unless there be two or more defendants in the same interest, *ib.* 59—Proposition, that no counsel do prepare or settle a bill without written instructions from the solicitor, *ib.* 61—And that the signature of counsel to a bill be in future considered as a certificate that, assuming the instructions to be correct, it is not unfit that a bill should be filed, *ib.*

Suggestion of Mr. Beames as to the access which suitors should have to their counsel in the intervals which elapse between the last seal after Trinity Term, and the first seal before Hilary, *Rep.* 79—The evidence of various witnesses shows, that the time of the court has, in some instances, been occupied for several days in succession in hearing numerous counsel for the same party, *ib.* 101—And that there is not in the Court of Chancery any limit to the number of counsel which any suitor may employ, *ib.*

Allusion of one of the witnesses to a particular case in which eight or nine counsel were actually employed on one side, *Rep.* 101—This is a grievance which stands in need of correction, and such correction obviously is by limiting the number of counsel to be heard on the behalf of any one party, *ib.*—Suggestions as to the mode in which this might be done, *ib.*—Observations by Mr. Beames upon the erroneous notion that counsel are justified in some particular class of causes, in framing a statement which has no existence whatever in fact, *ib.* 106, 107—If this were the practice of the Court of Chancery it would call for the most severe reprehension, and it would obviously require an alteration, *ib.* 107.

Evidence of Mr. John Bell as to the delays arising in the Court of Chancery the practice of counsel in the Court of Chancery, *App.* 11–14—Evidence of Mr. George Boone Roupell, as to the great difficulty in the way of any counsel without the bar, being heard upon motion before the Lord Chancellor, from the pressure of business in the court, and according to the present system of the court, *ib.* 331—Evidence of Mr. William Vizard, with respect to the inconveniences experienced in the Court of Chancery, from the irregularity in the attendance of the King's counsel, *ib.* 459.

See also *Evidence.*    *King's Counsel.*    *Solicitors.*

*Courtenay, William* (Master in Chancery). Observations and suggestions of Master Courtenay, as to what alterations might be made in the practice of the Court of Chancery as far as relates to the practice and proceedings in the Master's office, *App.* 524.

*Courts of Law and Equity.* Results of inquiry by the commissioners as to "whether any and what part of the business now subject to the jurisdiction of the Court of Chancery, can usefully and beneficially be withdrawn from the same, and committed to the jurisdiction of any and what other courts and tribunals," *Rep.* 34.

Cor,

*Cox, Samuel Compton* (Master in Chancery). Observations and suggestions of Master Cox, in answer to the request of the commissioners, as to whether any and what alterations might be made in the practice of the court, or in the several offices of the court, as far as relates to the practice or proceedings in the Master's office, *App.* 509.

*Creditors.* See *Administration of Assets.* *Assignees.* *Bankruptcy.*

*Cross, Francis* (Master in Chancery). Observations and suggestions of Master Cross, as to what alterations might be made in the practice of the Court of Chancery, as far as relates to the practice and proceeding in the Master's office, *App.* 531—Second return on the same subject, *ib.* 532.

*Currie, James.* Practising solicitor in the Court of Chancery; particulars with respect to the proceedings in a cause of *Morgan v. Lord Clarendon* in that court; circumstances which occurred tending to entail upon the parties in the cause an expense which appeared unnecessary and burthensome, *App.* 131.

#### D.

*Daily Papers.* Daily papers, containing pleas, demurrers, rehearings, causes, exceptions, further directions and petitions, before the Lord Chancellor and Vice-Chancellor respectively, from the first seal before Michaelmas term 1822, to the last day of the sittings after Trinity term 1825, both inclusive; also appeals before the Lord Chancellor during the same period, *App.* 633—Also daily papers containing causes, rehearings, exceptions, further directions and petitions, before the Master of the Rolls; from the first seal before Michaelmas term 1822, to the last day of sittings after Trinity Term 1825, inclusive, *ib.* 894 *et seq.*—See also *Cause Papers.*

*Dancer, John Nursey.* One of the examiners of the Court of Chancery; evidence as to the proceedings before the examiners with respect to the examinations of witnesses, *App.* 292—Return from Mr. Dancer of the nature, form, and manner of the practice and proceedings of the examiners, *ib.* 541—Number of causes in which witnesses have been examined by Mr. Dancer, and interrogatories filed by Mr. Plumer, between the first day of Michaelmas term 1824 and the first day of Michaelmas term 1825, *ib.* 1150.

*Decrees.* Evidence taken by the Commissioners, and consideration given by them to the subject, as to the propriety of establishing a shorter mode of drawing up decrees than is now in use, *Rep.* 18—Proposal of the commissioners to extend a principle which has been beneficially exercised in some instances in courts of equity, to enable a defendant in certain cases to obtain a decree, *ib.* 32—And prosecute a cause, although the plaintiff is desirous of abandoning it, *ib.*—Recommendation that the court should, in certain cases, give that relief upon summary application in a cause, which can now only be obtained by a decree, *ib.*—Proposition, that wherever after answer it is apparent upon the pleadings that some certain decree must necessarily be made at the hearing, the court may in its discretion make an order to the effect of the decree which would be made at the hearing, if the cause were regularly prosecuted, *ib.* 58, 59.

Remarks as to how far it may be expedient to shorten the form of decrees, and to direct that such form should merely contain the title of the cause, and the mandatory part of the decree, *Rep.* 86—Applications are frequently made to the court to vary the minutes of decrees or orders, considerable periods having intervened since such decrees or orders were pronounced, *ib.* 88—Remarks upon the mischief arising from these applications, *ib.*—Explanation with respect to the proposition of the commissioners, with respect to decrees on the hearing of causes, *ib.* 100—In a great variety of cases the judgment pronounced at the hearing of the cause is in effect little more than an interlocutory order, though in technical parlance termed a decree, directing some inquiry or some accounts preparatory to the real and substantial decree to be pronounced upon further directions, *ib.* 101—In all these cases it would obviously tend to save much time, if the court had the discretion to direct, upon the motion of either party, any such inquiries or accounts, *ib.*—Leaving the plaintiff pending the prosecution of the inquiry, or the taking the accounts, to proceed in preparing the cause for hearing, *ib.*

In the stages of a cause subsequent to the hearing, clerical mistakes or errors arising from an accidental slip or omission, are sometimes discovered in decrees, which justice requires should be corrected, *Rep.* 115—They should be allowed to be corrected on an application by petition, *ib.*—The ancient rules of the court declare that "no bill of review shall be admitted, or any other new bill to change matter decreed, except the decree be first obeyed and performed, unless the court should make an order to the contrary," *ib.*

Evidence of Mr. Thomas Hamilton as to the expense of obtaining a decree; and as to how far a limit might be put to the period of obtaining a decree, *App.* 101—Answer of the registrars of the Court of Chancery, as to whether by any and what means it may be practicable to avoid the delays which occur in the delivery of decrees and orders,

*Decrees—continued.*

*App.* 548—And to secure to the parties the possession of them within one month, or some other reasonable time from the day of pronouncing, *ib.*—Always assuming that the opinion of the court, upon all the points of the cause or matter, is distinctly expressed at the hearing, *ib.*—Account of decrees in the Court of Chancery, during the years 1800, 1801, 1802; 1822, 1823 and 1824, *ib.* 1148—Names of the last 50 decrees in Mr. Walker's account with his clerk, and his fee received upon each such decree, *ib.* 1151—Names of the last 50 decrees in Mr. Raynsford's account, and his fees received on each decree, *ib.* 1152.

*Delays.* Consideration by the Commissioners as to by what alterations in the practice of the Court of Chancery, the time expended may be reduced beneficially for the suitors, *Rep.* 9—Ignorance of the subject has led many persons to believe that a suit in equity may be brought within narrower limits than is really consistent with the perfect administration of justice, *ib.*—The term "Delay" has been so frequently misapplied, as to convey a very incorrect idea with respect to the duration of a suit in Chancery, *ib.*—Even if an unnecessary delay be often occasioned in the preparatory stages of a suit in equity, it is less injurious than that which the existing rules of the court permit to a reluctant or negligent plaintiff, *ib.* 13—Provisions made by the Commissioners in their propositions for the prevention of delay, beyond those made by them relating to any particular stage of a suit, *ib.* 30—By the present rules of practice the remedy against unnecessary delay is in many instances in the hands of the party who is affected by it, *ib.* 32.

Evidence of Mr. Henry Bickersteth as to the various delays and expenses which are ascribed to the proceedings in the Court of Chancery, and proposal of some remedies for lessening or obviating these evils, *App.* 145—Evidence of Mr. James Lowe as to material alterations which might be made in the different branches of the practice of the Court of Chancery, by which delay and expense might be saved, *ib.* 160—Statement of views which have occurred to Mr. James Winter, with regard to the practice of the Court of Chancery, particularly as respects delays, *ib.* 307—Also further observations of Mr. James Winter on the same subject, *ib.* 312—Evidence of Mr. William Leake, M.P. as to the prominent causes of delay generally complained of in the different branches of the practice now pursued in the Court of Chancery, *ib.* 442.

See also *Administration of Assets.*      *Answers of Defendants.*      *Clerks in Court.*  
*Conveyancing.*      *Decrees.*      *Demurrers.*      *Hearing of Causes.*

*Demurrers.* Proposition of the Commissioners as regards cases where the defendant may protect himself by demurrer or plea, from discovery, either to the whole or to a part of a bill, *Rep.* 56—The costs of allowing or over-ruling a plea or demurrer have been for a long period fixed costs, *ib.* 79—Suggestions upon this subject, *ib.*—Questions sometimes arise on demurrers to evidence, which, as the practice now stands, if decided by the Master of the Rolls or Vice-Chancellor, may be carried to the Lord Chancellor, and then to the House of Lords, *ib.* 116—Difficulty of satisfying the mind that this is a salutary rule, or that the interests of justice require its continuance, *ib.*—The spirit of litigation may, in this instance, very usefully have a limit placed on it, and the time of the Court be economised, *ib.*—By providing, that upon these questions the judgment of the Lord Chancellor, the Master of the Rolls and the Vice-Chancellor, as the case may be, shall be final, neither subject to be questioned upon a rehearing or upon appeal, *ib.*

Evidence of Mr. John Bell as to the advantages which would result from allowing a longer time for demurring, especially in country causes, *App.* 16—Evidence as to the time which ought, consistently with the benefit likely to arise to all parties, to be allowed for demurrers, *ib.* 59—Evidence to show that the power of demurring is not, generally speaking, abused for the purposes of delay, *ib.* 175—Daily papers containing demurrers before the Lord Chancellor and Vice-Chancellor respectively, from Michaelmas term 1822 to Michaelmas term 1825, both inclusive, *ib.* 633.

See also *Answers of Defendants.*

*Deputy Serjeant-at-Arms.* Evidence of Mr. William Butt as to the duties and emoluments of the office of deputy serjeant-at-arms attending the Great Seal, *App.* 328.

*Dismissal of Bills.* The dismissal of a bill for want of prosecution is only analogous to a nonsuit at common law, *Rep.* 13—Evidence of Mr. John Bell with respect to dismissals, *App.* 20—Account of dismissals on hearing in the Court of Chancery during the years 1800, 1801, and 1802; 1822, 1823 and 1824—Account of dismissals for want of prosecution in the Court of Chancery, during the years 1800, 1801, 1802; 1822, 1823 and 1824, *ib.* 1148.

*Dowdeswell, John E.* (Master in Chancery). Observations and suggestions of Master Dowdeswell as to what alterations might be made in the practice of the Court of Chancery, as far as relates to the Master's office, *App.* 528—Second return on the same subject, *ib.* 530.

Drake,

*Drake, Thomas.* Return of Mr. Thomas Drake, chief clerk to one of the Masters, as to the amount of his salary and emoluments, *App.* 566.

E.

*Elderton, M.* Return of Mr. M. Elderton, chief clerk to one of the Masters, as to the amount of his salary and emoluments, *App.* 568.

*Ellison, Nathaniel.* Barrister practising in the Court of Chancery; has been a Commissioner of Bankrupts six years; witness's experience in the duties has been very great; defects in the system which have occurred to witness; remedies suggested, *App.* 415—Observations upon the subjects on which other witnesses have given evidence, *ib.* 487.

*Evidence.* A cause being at issue, if it turns at all upon disputed facts, the parties proceed to examine their witnesses, in support of the case which they have respectively made upon the pleadings, *Rep.* 13—It may happen that one party only feels it necessary to produce evidence, *ib.*—Much objection has been frequently urged against the mode of taking evidence in the Court of Chancery, *ib.*—Belief of the commissioners that the consequences of such imperfections have been overstated, although they are not insensible to the imperfections which belong to it, *ib.*

An objection that has been often made to the mode of taking proofs in the Court of Chancery, is, that it deprives the judge who is to decide the cause, of the benefit of an oral examination, and an observation of the conduct and demeanour of the witnesses, *Rep.* 14—The instances are very rare in which there is even any suspicion of ultimate injustice, in consequence of the existing mode of taking evidence, *ib.*—Another objection is, that the parties have not the opportunity of being present by their counsel, to question and cross-examine the witnesses *vivâ voce*, *ib.*—Some advantage will be derived in the investigation of facts, from the power with which it is proposed to invest the Master, of examining parties and witnesses *vivâ voce*, upon inquiries before him, *ib.* 15—Proposition, that where a plaintiff reads any part of the answer of the defendant as evidence, the defendant shall be entitled to have also read as evidence any other part of his answer which explains or qualifies the passage read by the plaintiff, *ib.* 62.

Evidence of Mr. George Boone Roupell, as to the present mode of taking evidence in the Court of Chancery, being productive of very considerable expense, and otherwise an injury to suitors, *App.* 340—Remedies suggested for ameliorating these evils, *ib.*—Also suggestions from Mr. Roupell on the same subject, given in subsequently to his examination, *ib.* 343—Paper delivered in by Mr. Forster, as to the different modes of taking parole evidence, *ib.* 581.

See also *Demurrers.*      *Examination of Witnesses.*      *Interrogatories.*      *Witnesses.*

*Examination of Witnesses.* Observations and suggestions of Mr. Beames in his explanatory paper as to the examination of witnesses residing abroad, by commissioners appointed for the purpose, *Rep.* 109—Evidence of Mr. John Bell, to show that there is no reason why the commission to examine witnesses should not be executed in term time, without order, *App.* 21—Examination of Mr. William Vizard to show the inefficiency of the mode of examining witnesses in the Court of Chancery, *ib.* 45—Evidence of Mr. Whitton generally as to the saving of expense in the examining of witnesses before the examiners, rather than examining by commission, *ib.* 70—Evils both in point of expense and delay, arising out of sending commissioners into the country, *ib.* 73—Evidence and suggestions of Mr. William Cooke as to the practice of the court in examining witnesses by commission, *ib.* 127.

Evidence with a view to show the defects in the present practice of the court with regard to the examination of witnesses, *App.* 181—Evidence of Mr. John Nursey Dancer, as to the proceedings before the examiners with respect to the examination of witnesses, *ib.* 292—Also evidence of Mr. Ralph Barnes, solicitor at Exeter, respecting the mode of examining witnesses in the country by commission, *ib.* 382—Commissions to examine witnesses from the first day of Michaelmas term 1824, to the first day of Michaelmas term 1825, *ib.* 1150—Number of causes in which witnesses have been examined by Mr. Dancer, and interrogatories filed by Mr. Plumer, between the first day of Michaelmas term 1824, and first day of Michaelmas term 1825, *ib.*

See also *Appeals.*      *Evidence.*      *Interrogatories.*      *Witnesses.*

*Examiner's Office.* Proposition, that for the better dispatch of the business of the examiner's office, a second sworn clerk be added to the office of each of the examiners, *Rep.* 45—Evidence of Mr. Thomas Hall Plumer, upon a return made by him on the requisition of the commissioners, containing a statement of the duties of the examiners, and containing also a proposition for the improvement of the office, *App.* 288—Evidence of Mr. John Nursey Dancer, as to the proceedings before the examiners, with respect to the examination of witnesses, *ib.* 292—Observations of Mr. Plumer in addition to former evidence, and return, *ib.* 546.

**Examiners.** Each examiner has one sworn clerk only, and the business is frequently delayed in consequence, *Rep.* 83—Return by Mr. Dancer of the nature, form, and manner of the practice and proceedings of the examiners, *App.* 541—Return by Mr. Plumer, one of the examiners, of the nature, form, and manner of the practice and proceedings in the examiner's office, *ib.* 542.

#### EXCEPTIONS:

1. *Propositions of the Commissioners, and Evidence of various Witnesses with respect to the Time allowed for filing Exceptions.*
2. *Proposed increase in the Deposit required from Parties taking Exceptions to the Master's Report.*
3. *Papers laid before the Commissioners.*

1. *Propositions of the Commissioners, and Evidence of various Witnesses with respect to the Time allowed for filing Exceptions:*

Proposition, that in all cases, whether the defendant's answer be filed in term time or vacation, the plaintiff shall be allowed two months to file exceptions to such answer, *Rep.* 40—Proposition as to the time that shall be allowed in case the defendant do not submit to answer the exceptions, for the plaintiff to refer the answer for insufficiency, *ib.*—And as to the period of time which shall be allowed to a defendant to answer the exceptions, in case of his submitting to answer them without a reference, *ib.*—Proposition, that if the plaintiff do not within a fortnight after a defendant's second or third answer to exceptions is filed, refer the same for insufficiency on the old exceptions, such answer shall thenceforth be deemed sufficient, *ib.*—And that when the plaintiff requires a further answer, it shall be so stated in the order, *ib.*—Also, proposition with respect to the time to be allowed a defendant upon a second reference of exceptions, *ib.* 40, 41.

Proposition, that, if the answer of the defendant be certified insufficient upon any reference of exceptions, then the Master shall, in his certificate, fix the time within which the defendant shall file his further answer, *Rep.* 41—And that the Master's judgment in this respect shall be final, *ib.*—Proposition, that upon a third answer certified to be insufficient, the defendant shall be examined, upon interrogatories, to the points reported insufficient, *ib.*—It shall not be necessary for the plaintiff, in the case of exceptions, to serve a subpoena for the defendant to make a better answer, *ib.*—Proposition as to the period after which, in all cases of reference of answers for insufficiency, the exception shall be considered as abandoned, and the answer deemed sufficient, *ib.*

Remarks by Mr. Beames on cases where the exceptions having been filed to the defendant's answer, he is allowed by the orders of the court (Ord. Ch. Ed. Beam. 181, 182), eight days to decide whether he will or not submit to those exceptions and put in a better answer, *Rep.* 71, 72—Reasons which induce the commissioners to recommend the proposition, that a plaintiff should be compelled within a given time to refer his exceptions to the original answer, or to abandon them, equally apply to exception to a second or third answer, *ib.* 72—Remarks in the explanatory paper by Mr. Beames with regard to those cases where defendants think fit to go before the Master on exceptions, *ib.* 72, 73—Also, remarks upon the proposition, intimating that the plaintiff should be compelled to obtain an order within a given time to refer his exceptions to the defendant's answer, *ib.* 74.

Evidence to show that the time allowed for filing exceptions is too long, *App.* 174—Difficulty of recommending any general fixed time, *ib.*—Evidence of Mr. Lancelot Shadwell as to the time which may be deemed sufficient to be allowed for a defendant to answer exceptions, *ib.* 192.

2. *Proposed increase in the Deposit required from Parties taking Exceptions to the Master's Report:*

Proposition, that the deposit upon exceptions to the Master's report shall be increased from 5*l.* to 10*l.*, to be paid to the adverse party if the exceptions are overruled, *Rep.* 61—A party upon taking exceptions to the Master's report makes a deposit of 5*l.* under an order made in 1710, *ib.* 105—And upon appealing from any decree or order, or upon obtaining a rehearing of any decree or order, he deposits 10*l.* under an order made in 1720 (Ord. Ch. Ed. Beam. 320–327. 459), *ib.* 105, 106—Expediency of increasing this sum to double the amount in each instance, *ib.* 106.

3. *Papers laid before the Commissioners:*

Daily papers, containing exceptions before the Lord Chancellor and Vice-Chancellor respectively, from the first seal before Michaelmas term 1822 to the last day of Trinity-term 1825, both inclusive, *App.* 633 *et seq.*—Daily papers, containing exceptions before the Master of the Rolls, from the first seal before Michaelmas term 1822 to the last day of sittings after Trinity term 1825, inclusive, *ib.* 894.

See also *Impertinence.*      *Insufficiency.*

*Execution*

**Execution of Instruments.** Difficulties are sometimes experienced, amounting to a failure of justice, from the contumacy of a party who refuses to obey a decree or order directing him to execute some instrument, *Rep.* 34—Proposition, that where a person is in prison for disobedience of an order of the court, directing him to execute some deed or other instrument, the court shall be empowered to authorize one of the Masters of the court to execute such deed, *ib.* 61.—See also *Instruments*.

**Expedition Money.** Evidence as to the abuse existing in the Court of Chancery with respect to the payment of expedition money, *App.* 102.

## F.

**Fairbank, James.** Practising solicitor in the Court of Chancery; nature of the proceedings in the case of *Sleman v. Hamlyn* in that court, with suggestions for the improvement of some of the practices of the court, *App.* 115—Paper delivered in by Mr. Fairbank, containing opinions of Mr. Leach and Sir S. Romilly on the case of *Sleman v. Hamlyn*, *App.* 577.

**Farrer, James William** (Master in Chancery). Observations and suggestions of Master Farrer as to whether any and what alterations might be made in the practice established in the Court of Chancery and in the several offices of that court, *App.* 534—Second return on the same subject, *ib.* 537.

**Fees.** Paper addressed to the commissioners by the Masters in Chancery, requesting that the present mode of remuneration for their services should be altered, by the substitution of fixed salaries for the various fees of office to which they are now entitled, *App.* 539—Compendious statement of the duties, fees, &c. of the Six Clerks in Chancery, *ib.*

See also *Clerks in Court.* *Copy Money.* *Expedition Money.* *Masters in Chancery*, 3.

**Filing Bills.** Account of the number of bills filed in the years 1799, 1800 and 1801; 1821, 1822 and 1823, *App.* 1146.

See also *Administration of Assets.* *Amended Bills.* *Counsel.*

**Fixed Salaries.** See *Fees*.

**Foreclosure.** Paper delivered in by Mr. Mills, being bill of costs of a plaintiff in a suit for foreclosure, *App.* 605—Total amount of the bill and profit of the clerks, *ib.*

**Forster, John.** Practising solicitor in the Court of Chancery; suggestions as to alterations which might be beneficially made in the practice of the Court of Chancery, *App.* 254—Further evidence, taken 24th November 1824, on the same subject, *ib.* 263—Further observations, submitted 6th December 1824, being suggestions tending to the amelioration of the practice of the Court of Chancery, *ib.* 302—Supplemental observations by Mr. Forster, *ib.* 304—Paper delivered in by Mr. Forster, as to the different modes of taking parol evidence, *ib.* 581—Second paper delivered in by Mr. Forster, with respect to infants courts, charity courts, *ib.* 582—Third paper delivered in by Mr. Forster, with respect to bankruptcy and lunacy, *ib.* 584.

**Further Directions.** After the Master has made his report, comes the hearing of the cause, for the purpose of obtaining the further directions of the court, consequential on that report, *Rep.* 24—Proposition that all causes originally heard by the Master of the Rolls or the Vice-Chancellor, shall be heard, on further directions, by the same judge, *ib.* 55—Unless the party entitled to set down such cause for hearing or further directions, shall think fit to have such cause heard by the Lord Chancellor, *ib.*—The present practice permits the suitors to set down their causes on further directions to come to be heard either before the Master of the Rolls or the Vice-Chancellor, *ib.* 92—Totally disregarding the fact that the cause has been originally heard by a different judge from the one before whom it is thus set down to come on upon further directions, *ib.*—Observations and suggestions upon this subject, *ib.* 92, 93.

Daily papers, containing further directions before the Lord Chancellor and Vice Chancellor respectively, from Michaelmas term 1822 to Trinity terms 1825, inclusive, *App.* 633 *et seq.*—Daily papers, containing further directions before the Master of the Rolls from the first seal before Michaelmas term 1822 to the last day of sittings after Trinity term 1825, inclusive, *ib.* 894 *et seq.*

## G.

**Gill, Christopher Dixon.** Has been second clerk in one of the Master's offices upwards of 15 years; evidence as to what has been and what is the ordinary course with respect to granting warrants in the office in which witness is employed, *App.* 386.

*Glyn, T. C.* Has been a Commissioner of Bankrupts above seven years; how far any alteration of the present constitution of Commissioners of Bankrupts would be desirable, *App.* 435—Further answers, delivered in by Mr. Glyn as a written paper, *ib.* 439—Also evidence upon the prominent defects in the present system of practice in the Court of Chancery, *ib.* 483.

*Grant, Robert.* Commissioner of Bankrupts; evidence generally respecting the practice in this court, *App.* 463.

*Gratuities.* See *Accountant-general's Office.* *Clerks in the Master's Office.*

## H.

*Habeas Corpus.* Objections to the practice of applications for writs of habeas corpus being made to the Lord Chancellor, *Rep.* 34—Proposition, that the Lord High Chancellor or Lord Keeper should have the power of granting writs of habeas corpus, and making the same returnable before any one of his Majesty's justices, either of the one bench or of the other, or before any of the Barons of the Exchequer, *ib.* 62, 63—Evils arising from the rule with regard to bringing parties before the Lord Chancellor by writs of habeas corpus, in order for their discharge, if their imprisonment should, upon the discussion, appear to be illegal, *ib.* 109—This evil is a public evil to the suitors in general in the Court of Chancery, *ib.* 110—The remedy for this evil appears to be that suggested by the report of the Lords Committee, *ib.*—Namely, to allow the Lord Chancellor, when he may think it necessary, to make the writ returnable before any one of the common law judges, and requiring that such judge should proceed to dispose of the question, *ib.*

See also *Appearances.*

*Hamilton, Thomas.* Solicitor; information with respect to the different stages of a suit in the Court of Chancery, *App.* 87—Further evidence on the same subject, *ib.* 100.

*Harris, Wintour.* Solicitor, residing at Bristol; evidence with respect to the practice pursued in the Court of Chancery in a case upon a title, a bill filed for the specific performance of a contract, *App.* 271.

*Harvey, John Springett* (Master in Chancery). Observations and suggestions of Master Harvey, in answer to the query of the commissioners as to whether any and what alterations might be made in the practice established in the Court of Chancery, or in the several offices of that court, as far as relates to the practice or proceedings in the Master's office, *App.* 507—Second return on the same subject, *ib.* 508.

*Heald, George.* Has had a very large share of business as an equity draftsman; evidence taken 24 January 1825, to show that no improvement can be made in the form of pleadings in equity, except as to pleas, *App.* 350.

*Hearing of Causes.* Many of the propositions of the commissioners will have the effect of relieving the Court of Chancery from the delay which occurs between the time of setting down a cause for hearing and the actual hearing, *Rep.* 15—Propositions of the commissioners with a view to altering the expense of causes standing for hearing, *ib.* 46, 47—Proposition, that there be at least two clear days between the time of service of the notice and the day of hearing of every special motion, *ib.* 62—And at least two days between the time of service and the day of hearing of every petition, *ib.*

Evidence of Mr. William Whitton, taken 14 July 1824, with respect to the causes of the delay which so frequently arise in the Court of Chancery between the time of filing a bill and the time of setting down a cause for hearing, with suggestions for remedying the evils, *App.* 57—Further evidence taken 16th, 19th and 21st July 1824, on the same subject, *ib.* 63, 70.—See also *Decrees.*

*Hewitt, Mark.* Has been second clerk to one of the Masters fifteen months; ordinary course with respect to the granting of warrants; hours during which they are ordinarily granted, *App.* 387.

*Hewlett, Joseph.* Has been second clerk to one of the Masters twenty-seven years; evidence as to the ordinary course with respect to the granting of warrants before the Master, as to the hours of granting them, and as to the hours of hearing them, *App.* 377.

*Hine, James.* Chief secretary of the Master of the Rolls; general nature of the duties of the office, emoluments, &c.; how far any improvement beneficial to the public, for the purpose of saving either delay or expense, might be made in the office, *App.* 324.

*Hone, John.* Return of Mr. John Hone, chief clerk to one of the Masters, as to the amount of copy money received by him upon an average of the three years preceding 1825; and also the amount of his salary and other emoluments, *App.* 563.

*Hooper, Horatio.* Has been second clerk to one of the Masters two years; evidence as to the ordinary course with respect to the granting of warrants in the Master's office before the Master, *App.* 375.

*Horne,*



**Horne, William.** Was for many years a Commissioner of Bankrupts; has had very considerable practice in bankruptcy in the Court of Chancery; evidence given 4th February 1825, to show that the bankruptcy business embraces questions which are peculiarly fitted for an equitable jurisdiction, and that this business could not be advantageously to the public transferred to any common-law jurisdiction, *App.* 369.

Further examination, 11th February 1825, on the same subject, *ib.* 383.

**Hough, S.** Return of Mr. S. Hough, chief clerk to one of the Masters, as to his salary and emoluments, *App.* 568.

**House of Lords.** Account specifying the names of the last fifty appeals presented to the House of Lords from the decrees or orders of the Lord Chancellor, showing also the respective days on which such appeals were presented, and distinguishing those brought from the decision of the Lord Chancellor in which the matter or cause heard had been previously heard and decided by the Master of the Rolls or Vice-Chancellor, *App.* 1090—Account of the days on which the House of Lords proceeded in the hearing or consideration of appeals or writs of error, or in giving judgment on those previously heard, or on which Committee for Privileges met, *ib.* 1103—Stating the names of the parties in the appeals or writs of error; specifying those heard or disposed of when the Lord Chancellor was present or the Lord sitting as Speaker under his Majesty's Commission, and the names of the peerages, in the years 1823, 1824, and 1825, *ib.*

See also *Interlocutory Proceedings*.

# I.

**Impertinence.** Opinion of Mr. Bell that it would be useful that no reference for scandal or impertinence should be permitted except on exceptions taken and signed by counsel, *App.* 27.

**Infants' Courts.** Paper delivered in to the Commissioners by Mr. Forster with respect to infants' courts, *App.* 582.

**Injunctions.** Proposition that to every bill where the common injunction to stay proceedings at law is sought, there shall be annexed an affidavit, made by the plaintiff and his solicitor, stating that the bill is not filed for delay, and only for the purpose of obtaining equitable relief or discovery in aid of a proceeding at law, *Rep.* 56.

Observations by Mr. Beames, in his explanatory paper, upon the examination of many persons upon that peculiar process of the court, termed an injunction, *Rep.* 96—They issue rather for the prevention than as a remedy for an injury, *ib.*—Much indiscriminate censure has been thrown upon this process by the persons examined, without their very accurately distinguishing between the special injunction and the common, *ib.*—The special injunction is founded on a case brought distinctly before the view of the court and supported by oath, *ib.*—And also having for its object the prevention of some immediate and irremediable injury, *ib.*—A common injunction issues as a matter of course in given events, without the attention of the court being called to the subject, *ib.*—And without any corroboration by oath of the facts of the case as put in issue by the pleadings, and which has for its object the staying of proceedings at law, *ib.*

Evidence upon the abuse existing in applications for injunctions, and suggestions for obviating this evil, *App.* 26—Evidence of Mr. William Cooke as to injunction causes taking up a very considerable portion of the time of the court, *ib.* 129—Number of common and special injunctions in the years 1799, 1800, 1801, and 1821, 1822, and 1823, respectively, *ib.* 1148.

**Instruments.** Observations by Mr. Beames upon the doubts suggested by some of the parties examined before the Commissioners, whether upon a bill filed by any party interested, or by an executor or trustee, for the construction of any instrument, or for the direction of the court, on any matter of trust, it is in the discretion of the court to confine its decree to the particular relief prayed by the bill, *Rep.* 94—If the court directs a party to execute a deed or instrument, and such party contumaciously refuses to do it, such refusal ought not to defeat the ends of justice, *ib.* 106—The court ought to be invested with a power of giving full and entire effect to its own orders, of directing one of its own officers to execute such deed or instrument, *ib.*—Observations by Mr. Beames, in his explanatory paper, as to the other powers which the court should possess in these cases, *ib.*—See also *Execution of Instruments*.

**Insufficiency.** With respect to exceptions to answers for insufficiency, there is, it seems, a difference of opinion amongst the Masters, producing a totally opposite result in their decisions, *Rep.* 91—Proposition of the Commissioners on this subject, *ib.* 53—Observations and suggestions of Mr. Beames on the propositions of the Commissioners, *ib.*—Result of accounts from the Masters' offices in August 1824, with respect to references for insufficiency, *App.* 1154.

See also *Exceptions*, 1.



**Interlocutory Proceedings.** The decisions of the courts of law upon interlocutory proceedings cannot be carried by appeal to the House of Lords, *Rep.* 90—The rule applies a very wholesome limit to litigation, but unfortunately it does not prevail in the Court of Chancery, *ib.*—Extract from the Report of the Lords Committee, ordered to be printed on the 17th June 1823, as to the practice in this respect and its consequent evils, *ib.*—Observations and suggestions of Mr. Beames on this subject, *ib.*

**Interrogatories.** Proposition that the last interrogatory now commonly in use, be altered by omitting certain words, *Rep.* 45—Amongst the objections which have been made to the form of the interrogatories exhibited for the examination of witnesses, not the least prominent is that which applies to the last interrogatory, *ib.* 83—Which requires the witness to state anything which may be of benefit or advantage to the party on whose behalf he is examined, *ib.*—Explanatory remarks upon the proposition of the Commissioners on this subject, *ib.*—Evidence generally with respect to the practice of examining witnesses in the Court of Chancery by interrogatories, *App.* 71—Evidence of Mr. Bickersteth as to how far any limit might be imposed by rule on the liberty of interrogation, *ib.* 153—Number of causes in which witnesses have been examined by Mr. Dancer, and interrogatories filed by Mr. Plumer, between the first day of Michaelmas term 1824 and the first day of Michaelmas term 1825, *ib.* 1150.—See also *Exceptions*, 2.

**Investment of Money.** Proposition that whenever any order is made by the court for the investment of money, the Accountant-general shall at once proceed to lay out such money, without waiting for the written request from the solicitor, *Rep.* 55—According to the present practice the Accountant-general does not proceed to execute an order of the court directing him to invest money, unless the solicitor by a written request applies to him to execute such order, *ib.* 93—Explanatory observations by Mr. Beames on the proposition of the Commissioners for making an alteration in this practice, *ib.*

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**Jones, William.** Return of Mr. William Jones, chief clerk to one of the Masters, as to the amount of copy money received by him upon an average of the three years preceding 1825; and also the amount of his salary and other emoluments, *App.* 567.

**Judgment.** See *Decrees*.

**Jurisdiction of Chancery.** The jurisdiction of the Chancery as a court of common law occupies a very inconsiderable portion of time, *Rep.* 6—No complaint having been made of any of the proceedings had therein, the Commissioners have not thought it necessary to enter into any detailed investigation or to propose any alteration with respect to it, *ib.*—Nature of the jurisdiction entrusted to the Court of Chancery of England as a court of equity, *ib.*

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## K.

**Kensit, Mr.** Return of Mr. Kensit, chief clerk to one of the Masters, as to the amount of copy money received by him upon an average of the three years preceding 1825, and also amount of salary and other emoluments, *App.* 562.

**King's Counsel.** Evidence of Mr. William Vizard with respect to the inconveniences experienced from the irregularity in the attendance of the King's counsel, *App.* 459.

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**Kitson, Mr.** Return of Mr. Kitson, one of the chief clerks in the Accountant-general's office, as to the amount of salary and gratuities received by him, *App.* 559.

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**Lammin, James.** Chief clerk in Master Stephen's office; regulations in that office with respect to gratuities received from solicitors; duties of the clerk, &c., *App.* 132—Return of Mr. James Lammin as to the amount of copy money received by him upon an average of the three years preceding 1825; and also the amount of his salary and other emoluments, *ib.* 564.

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*Leake, William*, M.P. Solicitor in the Court of Chancery; evidence as to the prominent causes of delay generally complained of in the different branches of the practice now pursued in the Court of Chancery, *App.* 442—Paper delivered in by Mr. Leake on this subject and referred to in his evidence, *ib.* 613—This paper contains a statement of the costs of the plaintiff in a suit between Josephine Jane Templer, an infant, and the Rev. George Templer and others, *ib.*—Second paper delivered in by Mr. Leake on the same cause, *ib.* 626.

*Legacies.* Propositions of the Commissioners with regard to cases where the resistance to the payment of a legacy arises wholly from a doubt as to the construction of the gift in the will, *Rep.* 56.

*Legacy Act.* Powers given by the Legacy Act (the 36th Geo. 3, c. 52, s. 32), in cases where by reason of the infancy or absence beyond the seas of any person entitled to any legacy, &c. chargeable with duty, *Rep.* 94—By virtue of this Act the personal representative cannot pay such legacy although he may have effects for such purpose, *ib.*—The Act allows him to pay the same into the Bank, giving the Court of Chancery, on petition or motion, the jurisdiction to direct it to be paid out of court to the person entitled to it, *ib.*—Observations and suggestions of Mr. Beames on this subject, *ib.*

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Daily papers containing pleas, demurrers, rehearings, causes, exceptions, further directions and petitions before the Lord Chancellor, from Michaelmas term 1822 to Michaelmas term 1825, both inclusive; also appeals during the same period, *App.* 633 *et seq.*—Account specifying the names of the last fifty appeals presented to the House of Lords from the decrees or orders of the Lord Chancellor; showing the respective days on which such appeals were presented, and distinguishing those brought from the decision of the Lord Chancellor in which the cause or matter had been previously heard and decided by the Master of the Rolls or Vice-Chancellor, *ib.* 1090—Rehearings, and appeals before the Lord Chancellor, set down in various terms, from 1808 to 1825, *ib.* 1092.

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*Lord Chief Baron*, The Right Hon. The. Has had a great deal of experience as draftsman in Chancery; evidence to show that no improvements could well be suggested in the form of pleading in Chancery, *App.* 344.

*Lowe, James.* Solicitor; material alterations which might be made in different branches of the practice of the Court of Chancery, by which delay and expense might be saved, *App.* 160—Observations with reference to former evidence, *ib.* 217.

*Lunacy.* Commissions to inquire of lunacy, issue from the Court of Chancery, *Rep.* 7—Paper delivered in to the Commissioners by Mr. Forster, with respect to lunacy cases in the Court of Chancery, *App.* 584—Evidence of Mr. Thomas Carr, Chancellor's secretary in matters of lunacy; account of the business done by the Chancellor in these matters, from November 1822 to November 1825, *ib.* 502—Increase of the business in lunacy of late years, *ib.* 503.

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years, *App.* 503—Paper delivered in by Mr. Carr, being an account of the lunacy business of the Court of Chancery, from the month of November 1822, to the 20th November 1825, *ib.* 1139—Account of lunacy petitions set down for hearing during the years 1799, 1800, and 1801, and during the years 1821, 1822, and 1823, *ib.* 1150.

## M.

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*Master's Office :*

1. *Delay and Expense attending the Practice in the Master's Office.*
2. *Duties and Attendance of the Clerks; their Pay and Emoluments.*

1. *Delay and Expense attending the Practice in the Master's Office :*

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## MASTERS IN CHANCERY :

1. *Present Practice of the Office; Powers of the Masters.*
2. *Alterations and Improvements suggested.*
3. *Propositions, &c. with respect to the Pay and Emoluments of the Masters.*

1. *Present Practice of the Office; Powers of the Masters :*

Period of the cause at which the duty of the Master in Chancery usually begins, *Rep.* 18—It is after the first hearing of a cause by the court that the most important references, and those which are most likely to lead to delay and expense, occur, *ib.*—Few cases in Chancery can be brought to a final decision without inquiries before the Master, *ib.* 18, 19—In cases where all parties (being competent) concur in suspending proceedings, it would not be advisable to make it incumbent on the Master to urge them forward, *ib.* 19—There are cases and occasions in which the Master can proceed *ex parte*, *ib.* 21—That is, in which upon default of a party to do that which it was his duty to do at a prescribed time, the report may properly be made in favour of the other party, *ib.*

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Observations and suggestions of Master Flower as to whether any and what alterations might be made in the practice and proceedings of the Court of Chancery, or in the several offices of that court, *App.* 532, 533—Observations which have occurred to Mr. William Wingfield, one of the Masters in Chancery, as likely to produce a useful alteration in the Master's offices, *ib.* 533, 534—Observations and suggestions which have occurred to Master Farrer on the same subject, *ib.* 534. 537.

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**Messengers.** Evidence of Mr. Lewis Peacock, as to the general nature of the duties of messenger to the great seal, *App.* 330—Number of warrants for the apprehension of persons for contempt Mr. Peacock has had to execute for each of the years from 1816 to 1824, both inclusive, *ib.*

**Mills, Richard.** One of the clerks in court; evidence as to how far the clerks in court add to the delay of a suit, *App.* 319—Return, first, on the part of the plaintiff: filing bill; enforcing appearance; making out powers to enforce answer, *ib.* 553—Delivery of exceptions; amendment of bill; injunctions; replication; commission to examine witnesses; entering rules to produce witnesses and pass publication, *ib.* 554—Secondly, on the part of a defendant: entering appearance; filing the answer; plea and demurrer; rules on defendant's part *ib.* 555, 556—Thirdly, general duties of a clerk in court; enrolment of decrees and orders; the taxation of costs; knowledge of practice, *ib.* 556, 557—Paper delivered in by Mr. Mills, being bill of costs of a plaintiff in a suit for foreclosure, *ib.* 605—The defendant held out every obstacle, and it was precisely four years from the filing of the bill to the period of making the foreclosure absolute, *ib.*—Total amount of the bill, and profit of the clerks, *ib.*

**Minutes.** A cause being heard and decided on, a very important duty devolves upon the registrar, of taking down the minutes and drawing up the decree, *Rep.* 16—At this period of the suit considerable delay frequently occurs, *ib.*—The expense of a decree is also great in all cases in which the pleadings are long, *ib.*—It would not be practicable in all cases that the minutes should be read or prepared immediately after the decision pronounced, *ib.* 18—Yet some check ought to be imposed upon a practice which now prevails to a great degree and leads to much delay and some expense, of applying to the court to vary the minutes, *ib.*

Recommendation of the Commissioners that two additional registrars should be immediately appointed, *Rep.* 16, 17—Observations respecting the establishment of the registrar's office, *ib.* 17—Duties, &c. of the different clerks in the office, *ib.*—Proposition that no application shall be permitted to vary the minutes of any decree or order, unless the same be made within three weeks after the decree or order pronounced, *ib.* 48.—See also *Copies of Proceedings.*

**Montagu, Basil.** Has been a practising barrister three or four and twenty years; has had for the last sixteen years considerable business in bankruptcy; witness has made many observations respecting the mode in which the bankrupt laws are administered by the different lists of commissioners; evidence given 15th July 1825, to show that a tribunal so constituted is not well calculated to do the business that is committed to it, *App.* 394—Further evidence taken 21st July 1825, on the same subject, *ib.* 397—Evidence taken 22d July 1825, on the subject of the evils attendant upon the want of publicity in the proceedings before commissioners, *ib.* 406.

**Morgan v. Lord Clarendon.** Particulars given by Mr. James Currie with respect to the proceedings in a cause of Morgan v. Lord Clarendon, in the Court of Chancery, *App.* 131—Circumstances which occurred tending to entail upon the parties in the cause, an expense which appeared unnecessary and burdensome, *ib.*—Particulars respecting the

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the proceedings in the cause of *Morgan v. Lord Clarendon*, *App.* 155—Paper delivered in by Mr. Winter, being amounts of the bills of costs of all parties, as taxed in a suit in Chancery, “*Morgan against Lord Clarendon*,” from Trinity term 1808 (when the bill was filed) to Trinity term 1823 (when the last taxation of costs was held), *ib.* 587.

*Munday, Mr.* Return of Mr. G. Munday, chief clerk to one of the Masters, as to the amount of copy-money received by him upon an average of the three years ending 1825, and also as to the amount of his salary and other emoluments, *App.* 569.

*Murray, James Archibald.* Under-secretary at the Rolls, and also secretary of causes; examination as to the general nature of witness's duties in those capacities, under each office; remuneration, &c. *App.* 327—There is only one instance in which any alteration beneficial to the public could be made, and that is as to confirming reports *nisi*; *ib.*

## N.

*New Trials.* If an issue be directed and the parties are dissatisfied with the result, an application for a new trial should be made, in the first instance, to the judge directing the issue, *Rep.* 116.

*Notices of Motion.* See *Amended Bills*.

## O.

*Oral Evidence.* See *Evidence*.

*Orders.* See *Decrees*.

*Orders Nisi.* Proposition that in all cases of orders *nisi* to confirm reports, the same shall be served on the clerk in court, without order, *Rep.* 62—And that such orders *nisi* may be obtained upon petition, as well as by motion, *ib.*—Proposition that the order *nisi* for dissolving the common injunction may be obtained upon petition as well as upon motion, *ib.*—And that such order be served two clear days before seal, *ib.*

In the case where a party does not perform an act directed to be done by him, his opponent is obliged to have recourse to an order *nisi*; *Rep.* 105—If the act be then done and no further process is had recourse to, the party suing out this order loses the costs of it, *ib.*—Opinion of Mr. Beames that the costs of the order *nisi* ought to be paid by the party whose conduct has led to its being sued out, although he does the act required without further process, *ib.*—Orders *nisi* to confirm reports can only be obtained by motion, which rule is productive of unnecessary delay out of term, as the days for motions then only occasionally occur, *ib.* 108—To prevent this delay it is expedient that such orders should be had upon petition, which may be presented any day, *ib.*—Delay arising from the rule that a defendant who has been restrained from proceeding at law, cannot out of term obtain the order *nisi* to dissolve the injunction but by motion, *ib.*—Suggestion of Mr. Beames, in his explanatory paper, that this should be obviated by allowing the order *nisi* to be obtained out of term by petition at the Rolls, *ib.*

*Orders of Course.* Proposition that the Master of the Rolls or the Vice-Chancellor be at liberty to discharge or vary any order of course made upon any petition or motion, by the Lord Chancellor, or by each other respectively, *Rep.* 65.

*Orders of the Court.* Suggestions offered by Mr. Bickersteth in his evidence with respect to process to compel obedience to orders, *App.* 150.

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*Parkinson, Mr.* Return of Mr. Parkinson, one of the chief clerks in the Accountant-general's office, as to the amount of salary and gratuities received by him, *App.* 558.

*Payment of Money into Court.* Proposition that in future no day shall be named in any order for payment of money into court, or for the transfer of stock into court, *Rep.* 55—By the present practice a day is inserted in orders, directing the payment of money or the transfer of stock, *ib.* 93—If the order is not complied with by the day so appointed, it becomes necessary to obtain a new order, thereby occasioning additional expense, *ib.*—Suggestions for obviating this evil, *ib.*—Suggestions of Mr. John Bell with respect to the practice of the court as regards the orders for the payment of money, *App.* 25.

*Peacock, Lewis.* Messenger attending the Court of Chancery; general nature of the duties of messenger to the great seal; number of warrants for the apprehension of persons for contempt witness has had to execute for each of the years from 1816 to 1824, both inclusive, *App.* 330.

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**Penn, Henry.** Has been second clerk to one of the Masters twenty years ; evidence as to the ordinary course in witness's office with respect to the granting of warrants, *App.* 376.

**Pensam, John.** Chancellor's secretary in the matters of bankruptcy ; evidence as to the Chancellor hearing matters in bankruptcy, *App.* 499—Seal papers delivered in by Mr. Pensam, *ib.* 1129—Paper delivered in by Mr. Pensam with respect to the business in bankruptcy, *ib.* 1132—Further paper delivered in by Mr. Pensam with respect to the business in bankruptcy, *ib.* 1136.

**Petitions.** Proposition that all petitions to the court, and all cases stated by the order of the court for the opinion of a court of law, shall be filed in the report office, *Rep.* 48—Daily papers, containing petitions before the Lord Chancellor and Vice-Chancellor respectively, from the first seal before Michaelmas term 1822 to the last day of the sittings after Trinity term 1825, both inclusive, *App.* 633—Daily papers, containing the list of petitions before the Master of the Rolls, from Michaelmas term 1822 to Trinity term 1825, both inclusive, *ib.* 894, *et seq.*—See also *Bankruptcy. Hearing of Causes.*

**Pleadings.** In cases of mere administration, where the question is upon the simple construction of some instrument, the same forms of pleading cannot be requisite as in those of complex litigation, *Rep.* 26—Proposition of the Commissioners with a view to remedying the evil, *ib.*—There would be danger in laying down any rules so precise as to fetter the discretion of the pleader, *ib.*—A party being a defendant to a suit in equity ought in all cases to be enabled to submit to the court any matter of fact, by reason of which he apprehends that he is not in strict justice compellable to make the disclosure sought by the bill, *ib.* 29—It has been thought expedient to recommend that a defence by answer should be permitted in all cases to which a plea or demurrer would, according to the present practice, be applicable, *ib.* 30—Providing, at the same time, for the plaintiff an expeditious mode of obtaining the decision of the court on the question of the defendant's liability to make the discovery sought, *ib.*

Proposition that a defendant shall, after appearance, be allowed, without order, eight weeks' time to plead answer or demur to the plaintiff's bill, in a town cause, and ten weeks in a country cause, *Rep.* 39.

Evidence given by Mr. John Bell as to what alterations might be usefully made in the form of Chancery pleading, *App.* 1. 9. 14. 20—Suggestions contained in the evidence of Mr. Henry Bickersteth, as to the mode by which the present form of the prolixity of proceeding in the Court of Chancery might be lessened, *ib.* 153—Evidence of Mr. William Whitton as to the preparation of pleadings in the Court of Chancery, *ib.* 184—Evidence of Mr. Lancelot Shadwell to show that no evil arises in the Court of Chancery from the prolixity of pleadings, *ib.* 194—Evidence of the Right hon. the Lord Chief Baron, to show that no improvements could well be suggested in the form of pleading in Chancery, *ib.* 344—Evidence of Mr. George Heald, to show that no improvement can be made in the form of pleadings in equity, except as to pleas, *ib.* 350.

**Pleas.** Explanatory observations by Mr. Beames, as to the evidence taken before the Commissioners upon the subject of the rules relating to pleas, *Rep.* 94—The result may be stated to be that those rules are so highly technical, and so difficult in their practical application, as to be productive in some instances of great injustice, *ib.* 94, 95—Daily papers, containing pleas before the Lord Chancellor and Vice-Chancellor respectively, from the first seal before Michaelmas term 1822 to the last day of the sittings after Trinity term 1825, both inclusive, *App.* 633.

**Plumer, Thomas Hall.** One of the examiners of the Court of Chancery ; examination taken 1st December 1824, upon a return made by witness, on the requisition of the Commissioners, containing a statement of the duties of the examiners, and containing also a proposition for the improvement of the office, *App.* 288—Return of the nature, form, and manner of the practice and proceedings of the examiners, *ib.* 542—Observations in addition to former evidence and return, *ib.* 546—Number of causes in which interrogatories have been filed by Mr. Plumer between the first day of Michaelmas term 1824 and the first day of Michaelmas term 1825, *ib.* 1150.

**Possession of Lands.** Proposition that where a party obstinately retains possession of lands or other real property, after a writ of execution of an order for delivering up possession has been duly served, the party issuing it be at liberty to issue not only the attachment for breach of such writ, but also the writ of assistance, *Rep.* 61—Practice of the court where a party obstinately retains possession of lands after a writ of execution of an order for delivery of such possession has been duly served, *ib.* 106—Utter uselessness of the intermediate writ of injunction, commanding the party to deliver possession, *ib.*—Suggestions for remedying this evil, *ib.*

**Practice of the Court.** What is called the "Practice of the Court," is the body of rules and orders regulating the proceedings, *Rep.* 10—Particularly the conduct of the parties as to the time and manner of taking the various steps which they are required to take in the progress of the suit, *ib.*

*Proceeding by Bills.* Evidence of Mr. Henry Bickersteth, offering suggestions with reference to the practice of proceeding by bills, *App.* 145.

*Process.* Evidence of Mr. William Whitton as to the causes of delay in issuing process in the practice of the Court of Chancery, *App.* 57—Evidence of Mr. Henry Bickersteth, offering suggestions with respect to the process to compel appearance to bills when filed, *ib.* 145.

*Propositions of the Commissioners.* General observations of the Commissioners upon the propositions laid down by them with reference to the proceedings in the Court of Chancery, *Rep.* 10—Propositions of the Commissioners with regard to the practice of the Court of Chancery, *ib.* 10, *et seq.*

*Publication.* The evidence having been taken, publication, as it is termed, then passes; that is, the examinations are concluded, and the depositions made public, and copies given out to the parties, *Rep.* 15—Much delay frequently occurs before this is done, and costs are also occasioned by applications being made, without any sufficient ground, to enlarge publication, *ib.*—Remedy proposed by the Commissioners for this evil, *ib.*—After publication is passed, the cause is to be set down for hearing, *ib.*—It so often happens that a suit in equity is intended by the plaintiff himself to be a dilatory proceeding, that it is necessary to lay down rules for preventing delay even in this stage of a cause, *ib.*—The payments for copies of proceedings taken from the Masters' office form the principal source from which the Masters are remunerated, *ib.* 23.

Proposition that publication shall not in future be enlarged except upon a special application to the court for that purpose, *Rep.* 46—This should be supported by affidavit, and be at the expense of the party applying, unless otherwise ordered by the court, *ib.*—Proposition of the Commissioners for the purpose of enabling all persons to obtain precise information from time to time as to the state of any cause in which they may be interested, *ib.* 58—Observations upon Lord Clarendon's order, providing, "that after witnesses examined in court, there should be two rules only given for publication, viz. an ordinary rule, and then a rule to show cause why publications should not pass, *ib.*—And upon the return of a commission, one rule only to be given, *ib.* 84—Within which times aforesaid, if the other side do not show unto the court good cause to the contrary, publication shall pass accordingly," *ib.*

Under the existing practice of the court, the parties upon the record have sufficient means of ascertaining the different steps which have been taken in the cause, with the precise nature of each of such steps, *Rep.* 99—But the practice does not concede information equally explicit to strangers, *ib.*—Nor indeed to persons who, though not in strictness parties upon the record, are, as creditors or legatees, materially interested in the nature of the cause, *ib.*—It must obviously be highly conducive to justice that every facility should be afforded to persons, however remotely interested, to obtain a perfect knowledge of the actual state of any cause at any given moment, *ib.*

Evidence to show that there are no reasons why rules for publication should not be entered out of term time, *App.* 20, 21—Evidence of Mr. Basil Montagu on the subject of the evils attendant upon the want of publicity in the proceedings before the Commissioners of Bankrupts, *ib.* 406.

*Pugh, John.* Return of Mr. John Pugh, chief clerk to one of the Masters, as to the amount of copy-money received by him upon an average of the three years preceding 1825, and also the amount of his salary and other emoluments, *App.* 563.

*Raynsford, Thomas A.* Has sat as registrar under the Chancellor; evidence as to the Lord Chancellor being engaged, on the days for which the cause papers are made out, in doing business which does not appear on the paper, *App.* 494—Paper referred to in Mr. Raynsford's evidence, *ib.* 1115—Statement from the minute-book of Mr. Raynsford, *ib.* 1147—Names of the last fifty decrees in Mr. Raynsford's account, and his fees received upon each decree, *ib.* 1152.

*Registrar's Office.* Proposition that in future any person may be at liberty to require from the registrar's office, a copy of the title and ordering part only of any decree or order, *Rep.* 47—Paying for the same at the present rate or price of 1 s. 6 d. for the first side, and 1 s. for every other side, *ib.*—Proposition that the present number of four deputy or sub-registrars be increased to six, *ib.*—And that each be allowed two clerks, *ib.*

Proposition that the registrar's office do continue open till three o'clock in the afternoon, and re-open at six, instead of shutting at two, and re-opening at five, as at present, *Rep.* 47—It is expedient that the Lord High Chancellor, the Master of the Rolls, and the Vice-Chancellor, should take into consideration the present state of the profits and fees of the several persons now employed in the registrar's office, *ib.*—The same parties should make rules and regulations for the admission and qualification of clerks in the registrar's office, *ib.*

From the evidence of various witnesses, it appears that most of the time of the deputy registrars is necessarily occupied in court, *Rep.* 86—The drawing up and passing of the decrees and orders are thereby unavoidably delayed, to the great injury of the suitors in general



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general, *Rep.* 86—Explanation by Mr. Beames of the remedial measures suggested on this subject, *ib.* 86, 87—Although no complaints have been made with respect to the fitness of any of the four gentlemen now occupying the office of deputy registrars, yet representations have been made in regard to the mode in which persons are originally introduced into the registrar's office as clerks, and trained for the situation of deputy-registrars, *ib.*—Remarks upon the propositions of the commissioners on this subject, *ib.*

Evidence of Mr. Vizard as to the serious obstacles in the registrar's office, which are detrimental to the interests of the suitors, *App.* 47—Remarks by Mr. Thomas Walker upon his return to the requisition to the commissioners, containing such suggestions as have occurred to him with respect to the office of registrar, *ib.* 302—Answer of the registrars to the requisition of the commissioners, as to whether by any and what means it may not be practicable to avoid the delays which occur in the delivery of decrees and orders, *ib.* 548—And to secure to the parties the possession of them within one month, or some other reasonable time, from the day of pronouncing, *ib.*—Always assuming that the opinion of the court, upon all points of the cause or matter, is distinctly expressed at the hearing, *ib.*—Also, reply to the requisition as to "what, in their opinion, would be the proper regulations with respect to the admission of clerks into the registrar's office," *ib.* 549—With a view to exclude all incompetent persons, and to secure to the public service that degree of information and intelligence which the situation demands, *ib.*—Further communication from the registrars to the commissioners for inquiring whether any and what alterations might be made in the practice established in the Court of Chancery, or in the several offices of that court, *ib.* 1153.

*Registrars.* The office of registrar would give full exercise to all the ability of gentlemen of very considerable talent at the bar, *Rep.* 17—Suggestion of the commissioners, that it might more certainly secure the effectual execution of these offices if they were filled hereafter by barristers of not less than ten years' standing, *ib.*

*Rehearing.* Proposition of the commissioners with respect to re-hearings, *Rep.* 65—Explanatory observations of Mr. Beames on the propositions of the commissioners with respect to the rehearing of causes decided by the Master of the Rolls, *ib.* 113, 114—A party dissatisfied with the decision, and conceiving that a different result would be the consequence of a further consideration of his case, sometimes chooses to have the cause reheard before the same judge, *ib.* 114—Reasons why it should be required that the party electing to rehear his cause before the same judge, or the same branch of the court, should be bound by the judgment on rehearing, which as to him individually should be final, *ib.* 115—This, however, should not preclude his adversary from his right to appeal, *ib.*—Nor should it prevent the court itself from directing a rehearing, if the purposes of justice require it, in the opinion of the court, *ib.*

Daily papers, containing rehearings before the Lord Chancellor and Vice-Chancellor respectively, from Michaelmas term 1822 to Michaelmas term 1825, *App.* 633 *et seq.*—Daily papers, containing rehearings before the Master of the Rolls, from Michaelmas term 1822 to Trinity term 1825, inclusive, *ib.* 894—Rehearings and appeals before the Lord Chancellor, set down in various terms from 1808 to 1825, *ib.* 1092—List of rehearings heard and disposed of by the Lord Chancellor, in each term and sittings since the sittings after Hilary 1822, *ib.* 1098—List of rehearings and appeals now depending and unheard before the Lord Chancellor, *ib.* 1101.

See also *Amended Bills.*

*Rejoinder.* Evidence of Mr. John Bell as to how far it would be useful, where a plaintiff files his replication before he receives notice from the defendant of a notice to dismiss for want of prosecution, that he should serve a subpoena to rejoin, and obtain a rule for a commission within one week from the filing of the replication, *App.* 19.

*Reports.* Evidence of Mr. John Bell upon the practice of the Court of Chancery, with respect to confirming reports, *App.* 21—Suggestions in the evidence of Mr. Whitton with a view to ameliorating the practice of the Court of Chancery in respect to the reports prepared by the Master, *ib.* 83.

*Rolls, Master of the.* Evidence of Mr. James Hine as to the general nature of the duties of the office of chief secretary to the Master of the Rolls, *App.* 324—Emoluments, &c. of the chief secretary, *ib.*—How far any improvement beneficial to the public, for the purpose of saving either delay or expense, might be made in the office, *ib.*—Evidence of Mr. James Archibald Murray as to the general nature of the duties of under secretary at the Rolls; emoluments, &c., *ib.* 327—There is only one instance in which any alteration beneficial to the public could be made, and that is as to confirming reports nisi, *ib.*—Information by Mr. Henry Burrows as to the quantum of business which was dispatched during the last twelve months that Sir William Grant sat, and the first twelve months that the late Master of the Rolls sat, *ib.* 497—Daily papers, containing causes, rehearings, exceptions, further directions, and petitions before the Master of the Rolls, from the first seal before Michaelmas term 1822 to the last day of sittings after Trinity term 1825, inclusive, *ib.* 894.

See also *Further Directions.*      *Six Clerks' Office.*



*Romilly, Sir S.* His opinion in the cause of *Sleman v. Hamlyn*, *App.* 577.

*Roots, George.* Barrister practising in the Court of Chancery; has been a commissioner of bankrupts upwards of twenty years; evidence as to the defects in the system of administering justice before the London Commissioners of Bankrupt; suggestions as to the mode in which some of the mischief of the system may be prevented, *App.* 428—Observations upon the subject of the evidence of other witnesses, *ib.* 488.

*Roupell, George Boone.* Has practised for a great many years as a pleader in the Court of Chancery; considerable difficulty in the way of any counsel without the bar being heard upon motion before the Lord Chancellor, from the pressure of business now in the court, and according to the present system of the court, *App.* 331—Also evidence as to other inconveniences arising from the present practice of the court, *ib.*—Evidence taken 19th January 1825, as to the present mode of taking evidence in the Court of Chancery being productive of very considerable expense, and otherwise an injury to suitors, *ib.* 340—Remedies suggested for ameliorating these evils, *ib.*—Suggestions from Mr. Roupell, given in subsequently to his examination, *ib.* 343.

*Salaries.* See *Fees.* *Master's Office.* *Masters in Chancery.*

*Seal Papers.* Seal papers delivered in by Mr. Pensam, *App.* 1129.

*Securities.* Account of the cash and securities belonging to the suitors in the Court of Chancery, standing in the books of the Bank of England, in the name of the Accountant-general, on the 1st October, 1823, *App.* 1145.

*Serjeant-at-Arms.* Evidence of Mr. John Bell with respect to the duties of the serjeant-at-arms in the Court of Chancery, *App.* 13.

*Service of Notices.* See *Clerks in Court.* *Hearing of Causes.*

*Shadwell, Lancelot.* Barrister practising in the Court of Chancery; beneficial alterations which might be made in the practices of that court, *App.* 190—Further evidence on the same subject, *ib.* 205.

*Shepherd, James.* Second clerk to one of the Masters; ordinary course of witness's office as to the granting of warrants; hours during which they are ordinarily granted, *App.* 386.

*Six Clerks' Office.* The nature and duties of the office of six clerks are particularly set forth in the report made in the year 1816 by the Commissioners appointed to inquire into the duties, salaries, and emoluments in courts of justice, *Rep.* 33—The Commissioners have also examined one of the present six clerks, *ib.*—There is not sufficient occasion for six persons in this office, *ib.*—The suitors do not receive sufficient advantage from the fees paid therein, *ib.*

These officers may, under new regulations, be employed most usefully for the public in the discharge of the duty in taxing costs, *Rep.* 33—It would be desirable on many accounts to relieve the Masters from this duty, *ib.*—Proposition, that the Lord Chancellor, the Master of the Rolls, and the Vice-Chancellor shall make arrangements with respect to the alterations proposed by the Commissioners in the Six Clerks' Office, *ib.* 60—Several of the present six clerks are persons either much advanced in years, or of infirm health, and they would therefore be in a great measure inadequate to the discharge of the active duty of taxation, in addition to the other duties of their office, *ib.* 103—They should, in order to make room for the immediate appointment of effective taxing officers, be allowed to retire, *ib.*—Grounds upon which they should be allowed to retire upon pensions equivalent to their present emoluments as six clerks, and clerks of the inrolments, and comptrollers of the Hanaper, taken upon an average of the last three years, *ib.*—Evidence of Mr. Francis Vesey as to the duties of the six clerks, *App.* 138—Compendious statement of the duties, fees, &c. of the six clerks in chancery, *ib.* 539.

See also *Fees.*

*Sleman v. Hamlyn.* Evidence of Mr. James Fairbank as to the nature of the proceedings in the case of *Sleman v. Hamlyn* in the Court of Chancery, with suggestions for the improvement of some of the practices of the court, *App.* 115—Paper delivered in by Mr. Fairbank, containing the opinions of Mr. Leach and Sir S. Romilly on the case of *Sleman v. Hamlyn*, *ib.* 577.

*Solicitors.* Solicitors may agree in particular cases to dispense with the general rules made for the benefit of suitors, *Rep.* 12—There are cases in which it may be reasonable that they should so agree, *ib.*—And in which it would certainly not be for their client's interest to complain to the court, or to call for its interference, *ib.*—Delay occasioned by the non-attendance of solicitors, *ib.* 33—Suggestion as to the expediency of the court having authority in such cases to order the solicitors to pay personally the costs attendant upon such delay, *ib.*

*Solicitors*—continued.

Proposition that the solicitor employed for the plaintiff in a creditor's suit, shall not, nor shall his partner nor clerk, be employed for the defendant, *Rep.* 53—Proposition, that no solicitor employed for any party in a cause, nor his partner nor clerk, shall be employed for the receiver in the cause, *ib.*—Also, that he shall not be employed for any person purchasing property under a decree of the court in the cause, or who, not being a party, is in any other manner incidentally connected with the cause, *ib.*—And that whenever upon any proceedings before a Master, the same solicitor is employed for two or more parties, such Master may require that any such parties may be represented before him by a distinct solicitor, *ib.*

Proposition, that every solicitor be at liberty to register one or two clerks, to be approved of by the Master of the day, for the purpose of attending all proceedings in the Master's office, which he does not attend himself, *Rep.* 54—And that in cases where it shall appear that they cannot proceed by reason that a solicitor for one of the parties is not present, such solicitor shall personally pay to all or any of the parties, such costs as the court shall think fit to award, *ib.* 59—Proposition of the commissioners with respect to the taxation of the solicitor's bill, where the same solicitor is employed for two or more defendants, *ib.* 61.

Proposition, that in all cases where a person who is not a party appears upon any proceeding, in a cause or any other matter, service upon the solicitor in London, by whom he appears, shall be deemed good service upon such party, *Rep.* 62—There may be some reason to think that mischief sometimes results from the same solicitor being concerned for different parties in the same cause, *ib.* 91—Explanations, observations, and suggestions with respect to this subject, *ib.*—Observations upon the proposition, that it has not been deemed expedient by any general rule to prevent the same solicitor being so employed, *ib.* 92—Still it would be proper to arm the Master with a discretionary authority, enabling him, where the same solicitor is employed for two or more parties, to require that any of such parties should be represented by a distinct solicitor, *ib.*—To enforce obedience to this requisition, the Master should be allowed to refuse to proceed until such party is represented, *ib.*

It sometimes happens, that a cause cannot conveniently proceed because a solicitor for one of the parties, or his clerk, is not present, or by reason that the papers necessary for the use of the judge have not been delivered according to the practice of the court, *Rep.* 101—Observations and suggestions with a view to obviate this evil, *ib.* 101, 102—If the same solicitor is concerned for two or more defendants, in the same cause, there is nothing in the present practice which prevents him from putting in a separate answer for each defendant, to the obvious increase of the expense, *ib.* 107—Proposition, that the taxing officer should judge of the propriety of the solicitor's conduct in this respect, and that the judgment of such taxing officer upon it should be final, *ib.*

Evidence of Mr. John Bell, as to the delays which arise from the courtesy between solicitors, *App.* 10, 11—Inconvenience arising from the same solicitor being concerned for the parties who have in the cause conflicting interests, *ib.* 27—Evidence of Mr. Bell to show that it would be desirable that the solicitor employed by the plaintiff, should in no case be employed for any defendant, *ib.*—Evidence of Mr. William Vizard as to the delays which are occasioned in the Court of Chancery, by the solicitors of their clients in Chancery as they do in the courts of common law; reasons of this, *ib.* 37—Evidence of Mr. Vizard as to the propriety of a solicitor representing more than one party in a cause; opinion that a rule to prohibit such a practice would be productive of more evil than good, *ib.* 40.

See also *Administration of Assets.* *Clerks in Court*, 1. 4.

*Special Motions.* According to the Order of 1649, no special motion can be made without "two days' personal notice," (*Ord. Ch. Ed. Beam.* 115) which in construction has been deemed one clear day's notice; a notice for Thursday being deemed good if served on the preceding Tuesday, *Rep.* 107—Doubts as to whether this is the right construction of the terms of that order, *ib.*—It is expedient that notice of them should be given at least two clear days before they are to be heard, *ib.*

*Stanley, William.* Return of Mr. William Stanley, chief clerk to one of the Masters, as to his salary and emoluments, *App.* 565—Evidence as to the attendance and duties of the clerks, *ib.* 157.

*Stephen, James* (Master in Chancery). Observations and suggestions of Master Stephen, in answer to the request of the commissioners for inquiring whether any and what alteration might be made in the practice established in the Court of Chancery, or in the several offices of that Court, as far as such request relates to the practice or proceedings in the Master's office, *App.* 509—Second return on the same subject, *ib.* 523.

*Stratford, Thomas Paul* (Master in Chancery). Observations and suggestions of Master Stratford, in answer to the request of the commissioners for inquiring whether any and what

*Stratford, Thomas Paul* (Master in Chancery)—*continued.*

what alteration might be made in the practice established in the Court of Chancery, or in the several offices of that court, as far as such request relates to the practice or proceedings in the Master's office, *App.* 505—Second return on the same subject, *ib.* 507.

*Subpœna.* The first process of the court is the subpœna to compel the appearance and answer of the defendant to the bill of the complainant, *Rep.* 10—Delay and expense are occasioned by the manner in which this writ is now made returnable, *ib.*—Material alteration proposed by the commissioners in this respect, *ib.* 10, 11—Much improvement might be made in the form of the writ itself, *ib.*

Proposition that every plaintiff, whether in a town or country cause, shall at all times be at liberty, without order, to sue forth a subpœna to answer, returnable on a day certain, either in term time or in vacation, *Rep.* 39—Proposition, that the form of every writ of subpœna, to appear and answer, be altered so as to express the day required; and the consequence of disobedience, *ib.*—Also proposition, that a writ of subpœna be sued out for each defendant, *ib.*—And that the costs of all such writs be costs in the cause, *ib.*—Proposition, that in all cases the subpœna to hear judgment shall be served on the clerk in court, *ib.* 46.

Explanation by Mr. Beames, respecting the propositions of the commissioners with regard to subpœnas, *Rep.* 67, 68—The subpœna to hear judgment is in effect a mere notice that the cause will be heard on a given day, *ib.* 85—But by the practice of the court it is to be served personally, or left at the house of the party, with one of the family, a certain time before the hearing, *ib.*—This mode of service is sometimes dispensed with by an express order, *ib.*—There is an express provision of the court requiring all petitions for "subpœna, attachment, or other process," and the orders thereupon, to be filed with the registrar, *ib.* 89—Observations on the propositions of the commissioners on the subject, *ib.*—Evidence of Mr. John Bell as to the period at which subpœnas should be made returnable, *App.* 10—Suggestions offered by Mr. Bickersteth, in his evidence taken before the commissioners 6th August 1824, with respect to the form of the subpœna, *ib.* 147.—*See also Amended Bills.*

*Supplemental Bills.* It frequently happens, after a cause is referred to the Master by a decree, some event occurs which gives an interest in the subject-matter of the suit to an individual not originally before the court, *Rep.* 27—Proposition of the commissioners, that whenever a supplemental bill becomes necessary, the Master shall fix a time within which the answer shall be put in, *ib.*—Proposition respecting the power which should be possessed by the Masters in Chancery with respect to supplemental bills, *ib.* 54.

*Sworn Clerks.* Proposition that the sworn clerks of the court, and the waiting clerks, be no longer allowed to claim any fee for attendances in court upon any day when a cause shall be in the paper for hearing, *Rep.* 59—Or when a cause, appeal, rehearing, further directions, plea, demurrer, or exceptions, shall be in hearing, or in the paper after having been part heard, *ib.*—Qualification for the admission of a sworn clerk, *App.* 550—Duties of the sworn clerks, *ib.*—*See also Examiner's Office.*

## T.

*Taxation of Costs.* Proposition, that it is expedient that the Masters should cease to be the officers for the taxation of costs, *Rep.* 59—Except as to the costs of approving and appointing receivers, managers, and consignees, and committees of lunatics' estates, and of passing their respective accounts, *ib.*—The taxation of costs, according to the existing practice, is assigned to the Master of the court, *ib.* 102—This duty is discharged either by the Master in person, or by his chief clerk, *ib.*—In either case the assistance of a clerk in court is called in, *ib.*—Though material use is made of his assistance, the Master, in the eye of the court, is the taxing officer, *ib.*—The taxation is considered his; he signs the certificate, and his certificate officially ascertains the amount, *ib.*—Various objections have been taken to this mode of taxing costs; it has been alleged, that from the number of the Masters, there is not a sufficient uniformity in the principle, or indeed in the rule of taxation, *ib.*—Observations and suggestions by Mr. Beames, in his explanatory paper, with a view to remedying the evils complained of, *ib.* 102, 103—Evidence of Mr. Vizard, upon the present mode of taxing costs, *App.* 51—Evidence of Mr. Whitton, with a view to showing that no other officer than the Master ought to tax costs, *ib.* 81.

Proposition, that it is expedient that the taxation of all other costs should be transferred to the six clerks in Chancery, *Rep.* 59—Their time not being fully occupied by their present employment, and by their being relieved from all attendance in court, they would be adequate to the discharge of this new duty, *ib.*—Proposition, that for the relief of the six clerks, one of the entering registrars do at all times attend the Lord Chancellor's

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Chancellor's court during its sitting, for the purpose of publicly reading depositions, deeds, documents, &c., *Rep.* 59—And that the other entering registrar do in like manner attend the Vice-Chancellor's court, *ib.* 59, 60—Proposition, that inasmuch as several of the present six clerks are either far advanced in years, or of infirm health, that they be permitted to retire, *ib.* 60.

Proposition, that the same rule which is now applied in the taxation of costs, as between solicitor and client, be applied also in the taxation of costs as between party and party, *Rep.* 60—Unless, in the case of costs, between party and party, any of such costs shall appear to have been unnecessarily and unreasonably incurred, *ib.*

See also *Copy Money.* *Six Clerks' Office.*

*Templer v. Templer and Others.* Papers delivered in by Mr. Leake, and referred to in his evidence, *App.* 613—This paper contains a statement of the costs of the plaintiff in a suit between Sophia Jane Templer, an infant, and the Rev. George Templer and others, *ib.*—Second paper delivered in by Mr. Leake on the same case, *ib.* 626.

*Titles.* Evidence of Mr. Wintour Harris, with respect to the practice pursued in the Court of Chancery, in a case upon a title; a bill filed for the performance of a specific contract, *App.* 271—Evidence of Mr. Joseph Blower, as to the practice of the Court of Chancery with regard to titles, *ib.* 273—Evidence of Mr. James Winter with respect to a case of title in which he was concerned, *ib.* 276.

*Trower, James (Master in Chancery).* Observations and suggestions of Master Trower, as to whether any and what alterations might be made in the practice and proceedings of the Court of Chancery, or in the several offices of that court, *App.* 532—Second return on the same subject, *ib.* 533.

*Trusts.* One great source of the extension of the jurisdiction of Courts of Equity has been the invention of new modes of disposing of property, especially in the form of trusts, *Rep.* 7—A large portion of suits in Chancery embrace the administration of trusts, *ib.* 9—Such suits most beneficially endure as long as the trust continues, *ib.*—It would be a great advantage if the executor or trustee were left, after obtaining judgment upon the doubtful point, to execute the trust according to his own discretion in conforming with that judgment, *ib.* 27—In the administration of trust property, if the parties properly understood their business, little if any more time need be occupied than would be necessary for the administration, without the intervention of the court, *ib.* 28—In these suits the completion of sales made under the decrees of the court, may be so conducted as to become a prolific source of delay, *ib.*—It is desirable to provide as far as possible against those cases which sometimes occur, in which trust property is brought under the administration of the court, *ib.* 29.

## V.

*Vesey, Francis.* One of the six clerks; evidence as to the duties of the six clerks, *App.* 138—Paper delivered in by Mr. Vesey, *App.* 580.

*Vice-Chancellor's Court.* It would increase the weight and authority of this court, and add to its usefulness, if it were placed upon the same independent footing as the court of the Master of the Rolls, *Rep.* 37—Statement of the commissioners, that one of their propositions is adapted to this alteration, *ib.*—Proposition, that in order to give more weight and efficiency to the office of Vice-Chancellor of England, so much of the statute of the 53 Geo. 3, c. 24, as limits the power of the Vice-Chancellor to the hearing of such causes as the Lord Chancellor directs, should be repealed, *ib.* 64—And that it would be further expedient that the Lord Chancellor should still have full power and authority to direct that any cause or matter set down for hearing before him, be heard and determined by the Vice-Chancellor, *ib.*—But so as not to give authority to the Vice-Chancellor to reverse or alter any decree or order made by the Master of the Rolls, *ib.*

It would tend to add weight and dignity to the office of the Vice-Chancellor, if that judge were placed on a footing equally independent with the Master of the Rolls, except as to matters in bankruptcy, *Rep.* 110—Explanation as to what steps it would be necessary to take in order to effect this, *ib.*—The provisions of the statute, of the 53 Geo. 3, c. 24, prevent the Vice-Chancellor from "discharging, reversing, or altering any decree, order, act, matter or thing made or done," by the Lord Chancellor or Master of the Rolls, *ib.*—Benefit which would result from granting him this power, *ib.* 111—Daily papers, containing pleas, demurrers, rehearings, causes, exceptions, further directions.

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tions and petitions before the Vice-Chancellor, from Michaelmas term 1822 to Michaelmas term 1825, *App.* 633—Account of the business in bankruptcy brought on for hearing before the Vice-Chancellor, for three years, namely, from the seal before Michaelmas term 1822 to the seal before Michaelmas term 1825, *ib.* 1136.

See also *Bankruptcy. Further Directions. Six Clerks' Office.*

*Vivâ Voce Evidence.* See *Evidence.*

*Vizard, William.* Solicitor; evidence as to what alterations may be beneficially made in the practice upon various points in the Court of Chancery, *App.* 29. 40. 53—Additional information, given 14th January 1825, on the same subject, *ib.* 340—Communication delivered 7th November 1825, with respect to the inconveniences experienced from the irregularity in attendance of the King's Counsel, *ib.* 459—Papers delivered in by Mr. Vizard, being an analysis of clerks in courts' bills, *App.* 571. 576.

## W.

*Waiting Clerks.* The waiting clerks do not discharge any duty in return for the fee of 3 s. 4 d. which by the order of 26th February 1807, is allowed them expressly for every day a cause is in the paper for hearing (*Ord. Ch. Ed. Beam, 474.*), *Rep.* 102—As this, therefore, is a fee without duty, it should be no longer allowed them, *ib.*—The same observation applies to the fee of 6 s. 8 d., which by the same order is allowed them for every day a cause, appeal, rehearing, or further directions, shall be in hearing, or in the paper after part heard, *ib.*

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*Subpœna Office.* It is the duty of the patentee of the subpœna office, by himself or his sufficient deputy or deputies, to make out, write and engross, all writs of subpœna, sued out of the Court of Chancery, sealed with the great seal, *Rep.* i. 88—These duties are performed by a deputy, who receives a salary from the patentee, and retains to his own use part of the fees of the office, *ib.*—List of the fees and emoluments received in this office; fees according to the order of 1743; fees taken; fees recommended to be allowed, *ib.*—Notes on various of these fees, *ib.*—Hours of attendance in the office; holidays, *ib.*—Emoluments received by the deputy of the patentee of the subpœna office, *ib.* 89.

*Sworn Clerks.* Their duties; fees and emoluments; their fees according to the order of 1743, as modified by the order of 26th February 1807; fees taken; fees recommended to be allowed, *Rep.* i. 52-57—Hours for transacting business; holidays usually kept, *ib.* 57.

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*Train-bearer to the Vice-Chancellor of England.* The duty of this officer is to attend the Vice-Chancellor at term time at Westminster, and also at his sittings in Lincoln's-Inn, *Rep.* i. 164—This officer receives no fees or emoluments beyond the salary of 100*l.* per annum, pursuant to the statute 53 Geo. 3, c. 24, *ib.*

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*Usher of the Hall at the Rolls.* Duties of this officer; his fees and emoluments, *Rep.* i. 161.

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*Vice-Chancellor of England, Secretary to.* The duty of this officer is to attend on the Vice-Chancellor of England at all times whenever he sits in court, both in term time and at his sittings after term, *Rep.* i. 164—The statutes 53 Geo. 3, c. 24, and 55 Geo. 3, c. 64, direct the payment to this officer of two salaries, amounting to 500*l.* per annum; he receives no other fees or emoluments, *ib.*

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*Waiting Clerks.* The service, attendance and fees of the waiting clerks are the same in all respects as those of the sworn clerks, nor do they differ in anything from the sworn clerks, excepting that a clerk who has served but three years to a sworn clerk, may be admitted into the office of a waiting clerk, and that a waiting clerk has no right to take an articulated clerk under him, *Rep.* i. 58—And that two waiting clerks are allowed to one seat in the Six Clerks' Office, whereas the sworn clerks have each of them a separate seat, *ib.*

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*Marshal at the Sittings of Nisi Prius.* See *Associate and Marshal.*

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- 7. Duties, Salaries, and Emoluments.** 1819-20.—Report of the Commissioners appointed to examine into the Duties, Salaries, and Emoluments of the Officers, Clerks, and Ministers of the several Courts of Justice in England, Wales, and Berwick-upon-Tweed:—[as to the Court of Common Pleas:]—dated 3 July 1819; (3.) - - - - - Sess. Vol. II. p. 175.

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9. **Duties, Salaries, and Emoluments.** 1823.—Report of the Commissioners for examining into the Duties, Salaries, and Emoluments of the Officers, Clerks, and Ministers of the several Courts of Justice in England, Wales, and Berwick-upon-Tweed :—[as to the Court of Arches of the Lord Archbishop of Canterbury, the Prerogative Court of the same Archbishop, and the Court of Peculiars of the same Archbishop :]—dated 16 May 1823 (462.)

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#### ABSTRACT.

*Court of Arches of the Lord Archbishop of Canterbury.* Statement of the commissioners, that conformably to the course adopted by them in their former reports, they have in general recommended the allowance of those fees now received by the officers of this court, which appear from the presentments of the juries to have been received by the officers at the date of those presentments, and which they had no reason to believe had not been uniformly received from that time, *Rep.* 2.—Also statement by them, that in some instances, under these circumstances, fees have been recommended to be allowed without any note or comment, *ib.*—Observation of the commissioners, that they have not recommended the allowance of fees, under any other circumstances, without stating the evidence or grounds upon which they have been supported, *ib.*—Statement of the commissioners, that upon the same grounds upon which they were actuated in their former reports, they have not thought fit, at the present time, to recommend the disallowance of fees objected to by the juries in their presentments, merely on account of such objections, whenever those fees had received the confirmation of usage from the date of the presentments to the present time; reasons on which the judgment of the commissioners on this subject has been founded, *ib.*—In a few instances fees of a less amount than those mentioned in the presentments have been received; in general the commissioners have not recommended the receipt of the larger fees, *ib.* 2, 3.—Remarks of the commissioners, that they have not treated of duties or emoluments of the officers arising upon occasions not of a judicial nature (such as visitations, consecrations, &c.), *ib.* 3.—Opinion expressed by the commissioners, that no fees or emoluments should be received by the officers, or in their offices, which are not contained or referred to in this report, *ib.*

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*Court of Peculiars of the Archbishop of Canterbury.* Statement of the commissioners, that from the circumstance of no presentment having been made with respect to the Court of Peculiars of the Archbishop of Canterbury, an exact adherence to the same course as was pursued by them with respect to the Court of Arches and the Prerogative Court, was impracticable, but they have deviated from it no further than was necessary, *Rep.* 2.—Observations of the commissioners, that in their recommendations as to the allowance of fees to the officers of the Court of Peculiars, they have considered the receipt of the same fees, on the same occasions, by the officers of the other Ecclesiastical Courts, comprised in the presentments, if not conclusive evidence in favour of the officers of the Court of Peculiars, yet as forming a strong ground for recommending the allowance of such fees to those officers in future, *ib.* 2, 3.

Observations, suggestions, and recommendations of the commissioners with respect to the duties, salaries, and emoluments of the officers of this court, together with lists of the fees taken by them, and the fees recommended by the commissioners to be allowed, with notes and comments thereon, *Rep.* 66 *et seq.*: 1. Judge of the Court of Peculiars, *ib.* 66; 2. Register of the court, *ib.* 67-75; 3. Examiners of the court, *ib.* 75; 4. Sealer of the court, *ib.* 76; 5. Apparitors of the Court of Peculiars, *ib.* 77.

10. **Duties, Salaries, and Emoluments.** 1824.—Report of the Commissioners for examining into the Duties, Salaries, and Emoluments of the Officers, Clerks, and Ministers of the several Courts of Justice in England and Wales, and Berwick-upon-Tweed:—[as to the Consistory Court of the Lord Bishop of London, and the Court of the Commissary of the same Bishop within the City of London and Suburbs thereof, and the Deaneries of Middlesex and Barking :]—dated 4 July 1823 (43.) - - - Sess. Vol. IX. p. 25.

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11. **Duties, Salaries, and Emoluments.** 1824.—Report of the Commissioners for examining into the Duties, Salaries, and Emoluments of the Officers, Clerks, and Ministers of the several Courts of Justice in England, Wales, and Berwick-upon-Tweed:—[as to the High Court of Admiralty, the High Court of Delegates, and the High Court of Appeals for Prizes :]—dated 7 February 1824 (240.) - - - Sess. Vol. IX. p. 75.

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*High Court of Admiralty.* Statement by the commissioners, that in their inquiries respecting this court, they have pursued the same course which they pursued with respect to the courts of common law; that is, they have compared the fees now received by the officers of the High Court of Admiralty with the fees contained in the presentments of the juries acting under the Royal commission for inquiring into courts of justice, issued in and shortly after the year 1732, *Rep.* 2.—Statement of the commissioners, that where a fee now received appears to have been taken at the date of the presentment, and they have had no reason to believe that such fee had not uniformly been taken from that time, they have generally considered such fee as proper to be allowed, and have in some cases recommended

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**12. Saleable Offices.** 1810.—Report of the Commissioners appointed to inquire what Offices or Appointments, in the several Courts of Chancery, King's Bench, Common Pleas, and Exchequer, are now saleable; the average value thereof; amount of Emoluments; nature and extent of the Duties performed, and as to what Regulations and Provisions might be made with advantage to the Public, respecting the Salaries, Fees, and other Emoluments of such Offices or Appointments, from the time when the sale of them should be prohibited; dated 15 June 1810 (358.) - - - - - Sess. Vol. IX. p. 125.

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1. *Present state of the Law with regard to the Process of Appearance:*

Appearance has not been actual for centuries past; object of the proceeding; the regulation is useful and convenient, and should be retained, *Rep. i. 70*—Appearance and arrest being the only objects of non-bailable and bailable processes the variety of form therein is unnecessary, *ib. 77, 78*—Manner in which process operates as a means of enforcing appearance considered, *ib. 85*—By 12 Geo. 1, c. 29, it is provided that in certain descriptions of process the plaintiff might, upon affidavit that a copy had been personally served, enter an appearance for the defendant in his default, and proceed thereon as if the defendant had himself duly appeared; extended by 45 Geo. 3, c. 124, s. 3, to persons having privilege of Parliament, and by 7 & 8 Geo. 4, c. 71, s. 5, to all other persons, *ib. 86, 87*.

Difference of this proceeding in bailable actions and in serviceable actions, *Rep. i. 89*—There is no real or necessary connexion between bail, deposit and render, and the act of appearance, *ib.*—In what instances a plaintiff can compel an appearance and plea in the Common Pleas Court at Lancaster, at as early a period as in the courts at Westminster, *Rep. i. App. Thomson 253; Haydock 262; Howards & Harrison 276; Woodburn 286, 287; Mr. Serjeant Cross 307; Watson 311.*

2. *Suggestions for its Improvement:*

Proposition, that the time for appearance be eight days after service of summons, *Rep. i. 94*—That the plaintiff be allowed to enter appearance by default after personal service of summons and affidavit thereof, *ib.*—Appearance by default proposed to be allowed to be entered by the plaintiff in eight days after execution of distringas, defendant making default after service of summons at the place of abode, *ib.*—Appearance proposed to be entered to bailable process in the same manner and upon the same principles as to process not bailable, *ib. 95*.

Appearance by default proposed to be entered by the plaintiff in both bailable and serviceable process upon affidavit of the execution of the writ, or upon the sheriff's return, *Rep. i. 95*—In both bailable and serviceable process upon the expiration of eight days, the defendant should be considered as duly appearing, on delivery to the proper officer a memorandum in a certain form prescribed, *ib.*—Proposal as to entry of appearance after service of summons and issue of distringas, defendant's residence not being known, *ib. 96*—Proposal that the demandant in real actions shall be empowered and required to proceed by entering an appearance by default for the tenant, upon the distringas or personal service of the summons, *ib. 97*.

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Proposed regulations for entry by the plaintiff of appearance by default, *Rep. i. 123*—Proposed forms of entries of appearance, *ib. 134*.

Answers to queries circulated by the commissioners, showing that there is not any necessary connexion between appearance and perfecting bail in an action at law, *Rep. i. App. Austen 596; Prothonotaries of the Common Pleas 602*.

Answers to queries circulated by the commissioners, showing that it would be desirable that a plaintiff should be allowed in cases of bailable as well as serviceable process to enter an appearance for a defendant, and proceed thereon to final judgment, without waiver of his right to special bail, *Rep. i. App. Prothonotaries of the Common Pleas 602*—Answers to similar queries proving that it would not be desirable, *Austen 596*.

Answers to queries circulated by the commissioners, showing that it would be desirable that a defendant after arrest, should appear, as well as file special bail, or that in default of such appearance a plaintiff should be at liberty to appear for him and proceed to judgment without waiver of his right to bail, *Rep. i. App. Prothonotaries of the Common Pleas 602*—Answers proving objections to this course, *Austen 596*.

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*Arbitration.* Evils of almost compulsory arbitration after the expenses of trial have been gone to, *Rep. i. App. Eden 294*.

*Archbold, John Frederick.* Answers by John Frederick Archbold, barrister-at-law, to queries circulated by the commissioners on process and bail, and suggesting various amendments, *Rep. i. App. 503-509*.

**Arrears of Business.** Return of arrears at the beginning of Michaelmas Term 1824–1828, in the King's Bench and Common Pleas, *Rep. i. 12.*

Answers to queries circulated by the commissioners, giving information with respect to the present state of arrears in the King's Bench, or in any of the courts, whether in Banc or at Nisi Prius; in what particular branches they exist, and to what causes attributable, *Rep. i. App. Jervis 211; Denman 213; Taunton 216; Comyn 220; Sir J. Scarlett 230; Raine 233; Sir R. Graham 235; Mr. Serjeant Cross 238.*

Answers to queries circulated by the commissioners, showing that in proportion to the extra pressure in the Court of King's Bench the Judges have increased their efforts for the despatch of business; new arrangements made for that purpose and with what effect, *Rep. i. App. Denman 213; Taunton 216; Gurney 218; Comyn 220; Mr. Serjeant Lawes 222; Mr. Serjeant Peake 227; Maule 229; Sir J. Scarlett 230; Raine 233; Sir R. Graham 235.*

Answers to queries circulated by the commissioners, showing that since the introduction of new arrangements the arrears of business in the King's Bench have not diminished, *Rep. i. App. Maule 229; Raine 233; Sir R. Graham 235.*—Answers to similar queries, showing that the arrears have increased, *Denman 213; Taunton 216; Gurney 218; Comyn 220.*—Answers to similar queries, proving that the arrears at Nisi Prius have increased, *Sir R. Graham 235.*

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#### ARREST:

1. *Present State of the Law as regards Arrest.*
2. *Amendments Suggested.*

##### 1. *Present State of the Law as Regards Arrest:*

Arrest under 50*l.* cannot take place in a County Palatine on a writ from Westminster; evils thereof *Rep. i. 34, 35.*—The propriety of arrest is not universally admitted; arguments used in favour of it and against it; objects of the process, *ib. 71.*—By a fiction, the latitat and bill of Middlesex in the King's Bench, and the capias in the Common Pleas, command the defendant to be arrested, though such is never intended, *ib. 82, 83.*—The effect of arrest, when made, is, that the defendant must remain in custody till the time of his appearance to the action, or give bail to the sheriff, *ib. 88, 89.*

Answers to queries circulated by the commissioners, showing what degree of difficulty is usually found in effecting an arrest, either on mesne process or ca. sa, *Rep. i. App. Burchell 519; Goodrich 525; Wood 527.*—Answers, showing what proceedings are usually taken by the defendant, or his bail, on arrest, before his appearance in court is complete, *Austen 596; Parry 599; Prothonotaries of the Common Pleas 602.*—Answers, showing the nature of the abuse experienced on the arrest of defendants, *Austen 596; Parry 599; Prothonotaries of the Common Pleas 602.*

Answers to queries circulated by the commissioners, showing that a plaintiff having cause of action arising in the County Palatine of Durham, cannot arrest or compel appearance of defendant by personal process, otherwise than by outlawry, if the defendant be non-resident, unless he have property within the county, which may be attached, *Rep. i. App. Chaytor 336; Ward 342; Wright 345.*—The provision of 7 & 8 Geo. 4, c. 71, s. 7, preventing arrest within the County Palatine, by process from Westminster, for less than 50*l.*, is a hardship on the plaintiff, *Wright 345.*—Opinion that it is not a hardship on the plaintiff, *Ward 343.*—Principle on which the provision was adopted when all issues are tried at the same assize town, whether the action be commenced at Westminster or in the County Palatine, *Ward 343; Wright 345.*

Answers to queries circulated by the commissioners, showing that a plaintiff having cause of action arising in the County Palatine of Lancaster, cannot arrest or compel a defendant resident out of the County Palatine, to appear (otherwise than by outlawry), unless he comes within the jurisdiction, *Rep. i. App. Taylor 250; Thomson 252; Winstanley & Catterall 256; Noble 258; Hadfield & Grave 264; Howards & Harrison 276; Gardner 279; Dixon & Abraham 280, 281; Owen 284; Woodburn 287; Brooke 290; Eden 293; Mellor 296; Kershaw 300; Gibbon 303; Mr. Serjeant Cross 306; Watson 310.*

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Alteration should be made in the amount of debt for which a party may now legally be arrested, *Rep.* i. *App. Serjeant Lawes* 489; *Sir J. Scarlett* 491; *Comyn* 494; *Goodrich* 502; *Thomas* 511; *Tomlinson* 514—Opinions against any alteration in the amount being made, *Nicol* 496; *Prothonotaries of the Common Pleas* 500.

Answers to queries circulated by the commissioners, showing that the principle of arrest on mesne process ought to be retained in civil cases, and for what reasons, *Rep.* i. *App. Goodrich* 525; *Blanchard* 526; *Wood* 527—Answers to similar queries, urging that the power of arrest ought not to be retained, *Burchell* 518.

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*Assimilation of Practice.* Answers to queries, showing that it is desirable that the process and practice of the three Courts of Westminster Hall, should be placed in all respects on the same footing, *Rep.* i. *App. Jervis* 211; *Denman* 214; *Taunton* 217; *Gurney* 218; *Comyn* 221; *Serjeant Lawes* 225; *Maule* 230; *Sir J. Scarlett* 231; *Raine* 234; *Serjeant Cross* 239; *Sir J. Richardson* 243—Effect of such assimilation on the distribution and dispatch of business, *Denman* 214; *Taunton* 217; *Gurney* 218; *Comyn* 221; *Serjeant Lawes* 225; *Raine* 234—It would be more difficult than necessary to put the practice of the three courts on a footing, but it would be desirable that the process should be to a certain extent assimilated, *Sir R. Graham* 236.

Answers to queries circulated by the commissioners, showing that it is desirable that the defects of all the courts should be corrected, the advantages incident to each adopted generally, and one uniform course of practice and proceedings adopted throughout England and Wales, *Rep.* i. *App. Sir W. Owen* 421; *Kenrick* 427; *Hill* 442; *Raine* 444; *H. Malkin* 449; *Taunton* 452; *Denton* 460; *Owen* 483—Defects should be corrected, but not uniformity of practice established at the expense of the abolition of the Welsh judicature, *Jones* 430; *Evans* 424; *Williams* 438; *Whitcombe* 459; *Wyatt* 465; *Mr. Serjeant Goutburn* 473; *Wilson* 477.

**Assize Towns.** There should not be more than eight assize towns on each circuit, *Rep. i. 48*—The assize district should be stated in the margin of declaration, indictment, or information, as well as the county, *ib.*—List of places in England and Wales, appointed for holding assizes, other than shire towns, *ib. 68*.

When the English judicature is extended to Wales, one convenient place in each district should be selected for an assize town, *Rep. i. 41*—The extent, population, and distance from market towns, have been taken into consideration in selecting the assize towns for the principality of Wales, *ib. 44*—Power of changing the particular towns or portions of Wales at or for which assizes shall be holden, to be vested in the King, with the advice of the Privy Council, *ib. 48*.

Answers to queries circulated by the commissioners, showing the arrangements necessary to be made for holding assizes in more places than one, in the counties of York and Lancaster, and places recommended, *Rep. i. App. Woods 249; Taylor 251; Noble 258; Haydock 263; Hadfield & Grave 264, 265 et seq.; Howards & Harrison 277; Gardner 279; Owen 284; Woodburn 287; Brooke 291; Eden 294; Mellor 296; Ker-shaw 301; Gibbon 304; Lace 304; Watson 313*—Opinions in favour of assize towns remaining where they are, *Thomson 253; Mr. Serjeant Cross 307*.

The principle upon which the provision was adopted, that all issues are triable at the same assize town, whether the action be commenced in the Courts at Westminster, or in the County Palatines of Lancaster, is not known, *Rep. i. App. Hadfield & Grave 264*—The provision as to all issues being triable in the same assize town, operates partially and prejudicially to plaintiffs, whose causes of action arise out of the County Palatine, and who cannot arrest therein, unless the debt amount to more than double the sum necessary in any other part of England, *ib.*

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**Assizes.** Alterations that have been made at different periods as to the number of times of holding assizes in the year, *Rep. i. 55*—Necessity for there being more criminal assizes in the country than there are, *Rep. i. App. Mr. Serjeant Lawes 223*—Assizes are treated as terms for almost all purposes in the County Palatine of Lancaster, *Howard 321*.—See also *Shire Towns*.

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#### ATTACHMENT :

1. *Generally.*
2. *Attachment of Privilege.*
3. *Attachment with Proclamations.*
4. *Attachment against the Sheriff.*

##### 1. *Generally :*

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##### 2. *Attachment of Privilege :*

Attornies and officers of the court are entitled to sue by attachment of privilege in the King's Bench and Common Pleas, *Rep. i. 72, 73, 74*—Attachment of privilege at the suit of attornies or officers was one of the first exceptions allowed in either the Court of King's Bench or Common Pleas, to the primary method of suit by original writ; supposed causes, *ib. 75*—The process could only be instituted in those actions where the court had regular jurisdiction by original writ; in the King's Bench at present the attachment always alleges a trespass, *ib.*—When attachments of privilege first came into use has not been ascertained; they state on the face of them to be from time immemorial; they appear to have obtained as early as the reign of Edward 3, *ib. 75, 76*.

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3. *Attachment with Proclamations :*

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4. *Attachment against the Sheriff :*

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*Attorney and Solicitor General.* Their practising in the King's Bench may attract some suitors to that court, *Rep. i. App. Serjeant Lawes* 222.

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*Austen, B.* Answers by B. Austen, attorney, to queries on process, arrest, and bail, *Rep. i. App.* 594–598.

*Auxiliary Writs.* Propositions, that if a *capias* be delivered to the sheriff of one county, and the defendant be found to reside in another, an auxiliary writ should issue into the last county; but if unexecuted, should expire at the expiration of six months from the issue of the first writ, *Rep. i.* 101—That two or more writs of the same tenor may issue, to be tested on the days of issue; the day of the issue of the first writ being mentioned in the margin of the subsequent ones, and in the *præcipe*, so that they may not be in force longer than six months from the date of the first writ, *ib.* 122.

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2. *Propositions for the Amendment of the Law and Practice with respect to Bail :*

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<i>Bail.</i>	<i>Deposits.</i>	<i>Exception to Bail.</i>	<i>Notice to Bail.</i>	<i>Opposition to</i>
<i>Bail.</i>	<i>Principal and Bail.</i>	<i>Property of Bail.</i>	<i>Putting in Bail.</i>	<i>Sham</i>
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3. *State of the Business in the Court; whether it is fully occupied.*
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Propositions, that if the plaintiff proceeds after deposit, and does not recover more than the sum sworn to, the defendant ought not to be liable to the additional costs of proceeding in the action; and if he recovers less, the plaintiff ought to refund the difference between the sum deposited and the sum recovered, *Rep. i. 116*—That if the bail are rejected, the defendant shall pay the costs of the opposition; if allowed, the plaintiff shall pay the costs of justification, *ib. 127*—That if on application of payment of deposit out of court, the taxed costs exceed the 10 *l.* deposited, the plaintiff be entitled to a judge's order for payment of the difference, to be enforced by attachment, *ib. 128*.

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**Counties.** Plan by which, in the event of the English judicature being extended to Wales, the expense of maintaining the assize courts and gaols, and providing accommodation for the Judges, might be divided among two or three counties, *Rep. i. 41*—All the counties ought to have justice brought nearer home, *Rep. i. App. Woods 249*—Necessity for every county being equally treated in the administration of justice, *Taylor 251*.

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1. *Approval of a Measure for the Establishment of County Courts.*
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##### 1. *Approval of a Measure for the Establishment of County Courts:*

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**Crown Paper.** Business on the Crown Paper in the King's Bench, 1823-1827, *Rep. i. 11*—Arrears of the Crown Paper of the Court of King's Bench at the beginning of Michaelmas term 1824-1828, *ib. 12.*

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**Defendants.** Proposition, that serviceable process be directed to the defendant himself, *Rep. i. 97*—Benefits which defendants will derive under the proposed system from improvements of the situation of bail to the action, *ib. 112*—Manner in which the defendant should be described and warned in the writ of capias, *ib. 125.*

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**Delay.** If arrest were to be abolished the temptation to defend actions for the sake of delay would be increased, *Rep. i. 71.*

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**Delegates, Court of.** Number of sittings of the judges in the Court of Delegates, in Serjeant's-inn Hall, in the course of the year, *Rep. i. 16.*

**Demurrers.** Number of rules for concilium, demurrers for argument, and special cases in the King's Bench, Common Pleas, and Exchequer, 1823–1827, *Rep. i. 11.*

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**Denbigh Court of Great Sessions.** See *Montgomery and Denbigh Court of Great Sessions.*

**Denbighshire.** Advantage attached to the plan of the assizes for Denbighshire being held at Chester, *Rep. i. 43.*

**Denman, Thomas, K.C.** Answers to queries circulated by the commissioners, showing causes of the disproportion of business in the courts; stating that arrears in the King's Bench have increased since the new arrangements; objections to sittings in banc out of term, and to extra nisi prius sittings; to increasing the labours of the judges; also stating that if the efficiency of the other courts were increased, the three courts with their present number of judges could carry on the business satisfactorily; suggestions for equalizing the business of the three superior courts; objection to taking away the choice of courts; it is desirable to open the Common Pleas to barristers, and the Exchequer to attornies; to assimilate the practice of the three courts; objections to adding a judge to each court; term business, and sittings in that case; it is desirable that judgment in cases of misdemeanour should be passed at the trial, and that the terms should be fixed. Proposed constitution of courts of error assented to; suggestions offered against new trials; in favour of issues being simplified; and against the present system of special juries, *Rep. i. App. 213–215.*

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but on pain of costs for useless verbosity; no witness should be rejected as incompetent; objection to the examination of parties; unfairness of trials from the advantage of counsel having the last word; effect of judge's summing up; remedy suggested; advantages of the Crown over the subject in criminal prosecutions; evils of verdicts not being always unanimous; the judge should write down the points to be considered by the jury; new trials would then be fewer; proposed regulations as to costs; as to interest; what damages should be considered debts; bail in error; statute of limitations; evils of holidays; objection to certain oaths; judgments on criminal informations should be given at the assizes; necessity for vacations for the judges; manner in which the court overloaded with business might be relieved, *Rep. i. App. 639-645*.

*Denton, John*. Answers by John Denton, barrister-at-law, to queries circulated by the commissioners, relative to the abolition of the Welsh judicature, *Rep. i. App. 460-463*.

#### DEPOSITS:

1. *Generally*.
2. *Alterations in the Law recommended*.

##### 1. *Generally*:

If the defendant does not give bail he may, under Act 7 & 8 Geo. 4, c. 71, s. 2, 3, 4, deposit in court for the eventual satisfaction of the plaintiff's demand the sum sworn to, and a further sum as security for costs, *Rep. i. 89*—The defendant instead of giving bail may deposit in the sheriff's hands, subject to his appearance, the sum sworn to, 10*l.* for costs and the amount of the King's fine, if the suit be by original, *ib.*—After arrest immediate liberation can only be obtained by deposit of the sum sworn to, with 10*l.* to answer costs; this deposit is rarely made, *ib. 102*—Deposit with the sheriff, by Act 43 Geo. 3, c. 46, is extended to bail to the action by 7 & 8 Geo. 4, c. 71, *ib. 115*—Objection to application to the court by motion instead of to a judge, on summons for the payment of deposit to the sheriff, *ib.*—Answers to queries circulated by the commissioners, showing in what proportion of cases a deposit is made in lieu of bail, *Rep. i. App. Goodrich 525; Wood 527*.

##### 2. *Alterations in the Law recommended*:

The application for payment of the deposit proposed to be made by summons before a judge, both in term and vacation, *Rep. i. 116*—Also, that the defendant should make deposit with the sheriff in lieu of bail, application for payment of such deposit out of court being made before a judge on summons, *ib. 128*—And if the plaintiff proceeds further and recovers less than the sum sworn to, the defendant to be entitled to a judge's order and attachment for the difference between the sum deposited and the sum recovered, *ib.*

*Description of Defendants*. Disadvantage the sheriff lies under from defendants being differently described in different writs, *Rep. i. 114*.

*Detainer*. Proposition that a defendant should not be detained in custody after becoming entitled to his discharge in any action unless a writ or warrant for his detainer in some other action be shown him, *Rep. i. 114*—Penalty of 100*l.* proposed for detaining a defendant in custody after being entitled to his discharge without showing him the warrant authorizing such detainer, *ib. 131*.

Proposed proceedings against prisoners by way of detainer, *Rep. i. 129*.

*Dillwyn, L. W.* Answers by L. W. Dillwyn, of Penllergare-house, near Swansea, to queries circulated by the commissioners on the subject of annexing Wales to the English circuits, *Rep. i. App. 403*—Appendix, No. 1, to Mr. Dillwyn's answers, showing the hardship of the equity jurisdiction, *ib. 404*—Appendix, No. 2, detailing a conspiracy at common law, *ib. 405*.

*Direction of Writs*. The directions of writs should correspond with their real use and object, *Rep. i. 97*.

*Discharge from Custody*. Proposition that if a defendant enter into bail bond and pay fees within four days after arrest he should be entitled to discharge forthwith, and if not within that time, that he should first perfect bail to the action, *Rep. i. 125*—Also that on perfecting bail the defendant should be entitled to his discharge (without writ of superseas) on a judge's order, sealed with the seal employed for the sealing of writs, *ib. 129*.

*Dispatch of Business*. General suggestions for the dispatch of business in the courts, *Rep. i. 8, et seq.*—Queries circulated by the commissioners on the regulation of the courts and the dispatch of business, and answers thereto, *Rep. i. App. 209-246*—Answers to queries containing general suggestions for the more satisfactory dispatch of business, *Rep. i. App. Denman 214; Serjeant Peake 228; Raine 234; Sir R. Graham 237; Serjeant Cross 240*.

*Disproportion of Business.* Answers to queries circulated by the commissioners, stating that the causes of a permanent kind connected with the constitution of the courts at Westminster tend to a disproportion of business among them, *Rep. i. App. Jervis* 211; *Comyn* 220; *Maule* 229; *Sir J. Scarlett* 231; *Sir R. Graham* 235; *Serjeant Cross* 238; *Sir John Richardson* 241—Further answers to queries, showing that there are no causes of a permanent kind except the equitable jurisdiction of the Exchequer, *Denman* 213; *Raine* 233—Circumstances tending to the disproportion of business, *Taunton* 216; *Serjeant Peake* 226—The causes of the inequality of business are not connected with the general constitution of the courts, and are not dependent on that constitution, *Serjeant Lawes* 222.

Answers to queries circulated by the commissioners, stating the length of time the disproportion of business among the courts has existed, and since what period it has increased, *Rep. i. App. Jervis* 211; *Denman* 213; *Taunton* 216; *Gurney* 218; *Comyn* 220; *Serjeant Lawes* 222; *Serjeant Peake* 226; *Maule* 229; *Sir J. Scarlett* 231; *Raine* 233; *Sir R. Graham* 235; *Serjeant Cross* 238; *Sir J. Richardson* 241.

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*Distress.* See *Distringas*.

*Distribution of Business.* Proposal that returns be made to the Lord Chancellor in the first week in August, of arrears of business in any overburdened court, who is to be empowered to distribute such arrears among the courts less occupied, *Rep. i. 33*—Proposal for distributing the business among the courts according to the subject matter of the suits, *Rep. i. App. Serjeant Cross* 239.

Answers to queries showing in what practical mode the principle of distribution of business equally or in a certain ratio among the courts, could be carried into effect, *Rep. i. App. Jervis* 212; *Comyn* 221; *Serjeant Peake* 227; *Maule* 230; *Serjeant Cross* 239—The only effectual plan of distributing business and forming bars and benches, all equally adapted to their respective functions, is to recur on the old constitutional principles to the plan of confining the three superior courts to particular departments, *Taylor* 251.

#### *DISTRINGAS :*

1. *Description and Operation of the different Forms of this Process.*
2. *Amendments suggested by the Commissioners.*

##### 1. *Description and Operation of the different Forms of this Process :*

In what cases the process of *distringas* is sued out in the three superior courts; its nature and operation described, *Rep. i. 86, 87*—Course of practice established by the Act 7 & 8 Geo 4, c. 71; it was intended to relieve the inconveniences of proceeding by distress infinite, and applies to all cases except privilege of Parliament, corporations, and hundreders; mode of proceeding under the Act; its efficacy has been impaired by the construction put upon it by the courts, *ib.*

*Distringas* to compel appearance is very seldom resorted to in the Court of Common Pleas at Lancaster; it is supposed to have been superseded by writs of justices directed to the sheriff, and issuing out of the chancery of the county palatine, *Rep. i. App. Howards & Harrison* 276; *Howard* 319; *Palmer* 324, 325.

##### 2. *Amendments suggested by the Commissioners :*

Proposal that a *distringas* be issued for the levy of 40*s.* with notice to appear in eight days after execution thereof, in the event of default in appearance in eight days after service of summons at place of abode, *Rep. i. 94*—That it be taken out on affidavit of facts, without application to the court or a judge, *ib.*—And without affidavit of endeavour to serve the summons personally, or that the defendant is keeping out of the way to avoid process, *ib.*—Seizure of his goods will give the defendant (if within the realm) as effectual notice as personal service of the summons, and the loss of time will prevent the plaintiff resorting to it, unless where personal service is impossible, or highly inconvenient, *ib. 95*—In the event of the defendant being known or supposed to be abroad, the *distringas* should only issue on application to a judge on affidavit of facts; the judge fixing the time for appearance, *ib.*—And it should issue on a judge's order on affidavit of facts, and of service of summons on agent or partner, defendant's residence not being known, *ib. 96*.

Proposition that the mode of proceeding by statuteable *distringas*, under 7 & 8 Geo. 4, c. 71, be abrogated in all respects in which it differs from the course suggested by the Report, *Rep. i. 91*—Also that proceedings by way of distress infinite, in real and mixed actions, be discontinued, *ib. 96, 97*—That in real and mixed actions, the *distringas* be issued after non-appearance to summons served at the place of abode, *ib. 97*.

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Proposition that proceedings by statutable *distringas* in real actions be discontinued, *Rep. i. 97*—Proposed regulations for the issue of a *distringas*, after default by defendant to enter appearance, process being served at the place of abode, *ib. 122*—Suggestion that no *distringas* be executed after six calendar months from the teste, or be renewed or continued without judge's order on affidavit, *ib. 124*.

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*Dixon & Abraham, Messrs.* Answers by Messrs. Dixon & Abraham, attornies at Preston, to queries circulated by the commissioners in favour of the Palatine Courts, suggesting certain amendmens therein, and recommending the establishment of local courts, *Rep. i. App. 280, 281.*

*Documentary Evidence.* Suggestions for saving expense in the proof of documentary evidence in the Common Pleas at Lancaster, *Rep. i. App. Buck 327.*

*Dolgellan.* The town of Dolgellan proposed as the assize town for the midland district of Wales, *Rep. i. 42, 43*—Under the arrangement of the proposed new Chester circuit, several of the causes now tried at Shrewsbury would be tried at Dolgellan or Bangor, *ib. 52.*

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*Duckworth, William.* Communication from William Duckworth, attorney at Manchester, showing the advantages of the Court of Common Pleas at Lancaster, and suggesting amenduents, *Rep. i. App. 318.*

*Dugdale's Chronica Series.* Reference to this work as to circuits in the reign of Henry the Second, *Rep. i. 54*—Extracts from, as to circuits in the reigns of Henry the Second and Third, and Edward the First and Second, *ib. 66.*

*Dugdale's Origines Juridicales.* Reference to this work, as to the number of judges in the Common Pleas in various reigns, from Edward the Second to Henry the Seventh, *Rep. i. 27*—Also as to the appointment of justices of assize, *ib. 54*—Extract from this work, as to circuits in the reign of Edward the First, *ib. 68.*

*Duncan, J.* Communication from J. Duncan, suggesting that affidavits of debt and other affidavits required in the courts of common law should, as regards the city of London, be allowed to be sworn before the city magistrates, or before commissioners appointed for the purpose, to save commercial men the trouble of attending at the Temple or Westminster, *Rep. i. App. 685, 686.*

*Durham (County Palatine).* The judges of the counties palatine of Durham and Chester are appointed by commission under the Great Seal, *Rep. i. 34*—Number of causes entered for trial on the several circuits in England, 1823–1827, distinguishing the causes in the County Palatine Court of Durham, *Rep. i. App. 172, 173*—Answers to queries circulated by the commissioners, showing that there is no greater necessity for a separate jurisdiction in the counties palatine than in counties of England equally distant from the metropolis, *Rep. i. App. Chaytor 337; Wright, 345.*

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*Durham, Court of Pleas.* In the commission of the judges, the name of the Bishop of Durham stands first, and the names of all the judges of England are inserted, as well as those of several other persons resident in the county palatine; who act, *Rep. i. 34*—Evidence upon the extent of jurisdiction, and description of process and pleadings in this court, *Rep. i. App. Griffith 347–361; Barnes 364; Mewburn, 366.*

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Comparative summary of costs in ordinary proceedings in the Durham Court of Pleas, *Rep. i. App. 206, 207*—Copies of various bills of costs on proceedings in actions therein, *ib. 717–724.*

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**East, Sir Edward Hyde, M. P.** Suggestions by Sir E. H. East, late Chief Justice of Bengal, on the means of accelerating the trial of causes; on bail; motions of course; on the appointment of extra judges; and on the Welsh jurisdiction: *Rep. i. App. 245, 246.*

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**Eden, John.** Answers by John Eden, attorney at Liverpool, to queries circulated by the commissioners, showing the advantages and disadvantages of the Palatine Court at Lancaster, with suggestions for its amendment, *Rep. i. App. 292-294.*

**Edward the First, King.** Appointment of justices of assize and of four circuits in the second and twenty-first years of his reign, *Rep. i. 54*—Statute of Westminster, 13 Edw. 1, relative to assizes, *ib. 55*—Names of nineteen counties for which the first justices of assize were appointed in the 2 Edw. 1, *ib. 68*—Names of judges appointed for the four circuits, with names of counties after the Statute of Westminster, 21 Edw. 1, *ib.*

**Edward the Second, King.** Appointment of seven circuits in the reign of Edward the Second, *Rep. i. 54*—Statutes 6 & 11 Edw. 2, relative to assize towns, *ib. 55*—List of the seven circuits appointed, with three justices to each, in the 4 Edw. 2, *ib. 68.*

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**Edwards, R.** Letter from R. Edwards, chairman of the Carnarvonshire quarter sessions, in favour of doing away with the courts of Great Sessions, and tacking the Welsh counties to the English circuits, *Rep. i. App. 409.*

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1. *In the Superior Courts.*
2. *In the County Palatine Court of Lancaster.*

1. *In the Superior Courts:*

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**English Judicature.** Residents in Wales and Chester wish for the extension of the English judicature to those places; practitioners oppose it, though they admit the necessity of an extensive change, *Rep. i. 38.*

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1. *Of the Court of Exchequer (Westminster).*
2. *Of the Courts of Great Sessions in Wales.*

##### 1. *Of the Court of Exchequer (Westminster):*

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##### 2. *Of the Courts of Great Sessions in Wales:*

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*Error, Jurisdiction in.* Jurisdiction of the Court of King's Bench in the examination and correction of all errors in fact and law of all the judges, and misdemeanors extrajudicial tending to a breach of the peace, &c., 4 Inst. 71, *Rep. i. 9*—The abolition of original writs and proceedings by bill will not cause any new provision to be necessary as to error, as the establishment of a jurisdiction in error, applicable indifferently to all cases, without distinction as to the form of the process, is proposed by the report, *ib. 85.*

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*Essex and Hertford.* These counties were at first parts of the Norfolk circuit, *Rep. i. 55*—They have been transferred to the sixth circuit appointed by Edw. 2, *ib.*

*Evans, H.* Letter from H. Evans of Highmead, Cardiganshire, to W. E. Powell, M. P., enclosing answers to queries, showing the necessity of annexing Wales to the English circuits, *Rep. i. App. 385.*

*Evans, John.* Answers by John Evans, barrister-at-law, to queries circulated by the commissioners, against the abolition of the Welsh judicature, and suggesting certain amendments, *Rep. i. App. 431-434.*

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**Exaction.** Nature of this form under a writ of *exigi facias* on proceeding to outlawry, *Rep. i.* 91.

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#### EXCHEQUER, COURT OF (WESTMINSTER):

1. *Jurisdictions exercised by the Court; Nature of its various Processes, Costs, &c.*
2. *Defects in the Constitution of the Court tending to lessen the Amount of Business transacted; Causes thereof.*
3. *Alterations and Improvements proposed.*

##### 1. *Jurisdictions exercised by the Court; Nature of its various Processes, Costs, &c.*

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#### EXPENSE OF SUITS:

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2. *Chester County Palatine Courts.*
3. *Durham County Palatine Courts.*
4. *Lancaster County Palatine Courts.*
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##### 1. *In the Superior Courts:*

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##### 2. *Chester County Palatine Courts:*

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##### 3. *Durham County Palatine Courts:*

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*Fane, C.* Letter from C. Fane, Vice-chamberlain of the Court of Exchequer at Chester, to the Earl of Stamford, the Chamberlain, relative to the Chester judicature, and suggesting amendments, *Rep. i. App. 375*.

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#### RETURN OF WRITS:

1. *Periods within which Writs are at present returnable.*
2. *Proposition for Writs being returnable indifferently in Term or Vacation.*

##### 1. *Periods within which Writs are at present returnable:*

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**Rhayader.** Its distance from Hereford; small number of inhabitants, *Rep. i. 46*.



**Ribble and Mersey Rivers.** Justices were appointed, in the 25 Hen. 2, for the parts between the Rivers Ribble and Mersey, which comprise the whole southern part of the county of Lancaster, distinctly from the rest of that county, *Rep. i. 54.*

**Richardson, Sir John.** Answers by Sir J. Richardson, late one of the Judges of the Common Pleas, to queries circulated by the commissioners, on the regulation of the courts and the dispatch of business, *Rep. i. App. 241-244.*

**Richmondshire.** In the 22 Hen. 2, justices were appointed for Richmondshire, now forming the northern part of Yorkshire, distinctly from the county of York, *Rep. i. 54.*

**Ridout, Charles.** Letter from C. Ridout, of Chippenham, to the secretary of the General Post-office, on the subject of the roads to Cardigan from Carmarthen and Haverfordwest, *Rep. i. App. 686.*

**Rishton, Edward.** Letter from E. Rishton, an attorney at Preston, suggesting the abolition of the county palatine courts, and extending the jurisdiction of county courts to 50 l.; matters above that amount being regulated by the courts at Westminster, *Rep. i. App. 285.*

**Roberts, H.** Answers by H. Roberts, clerk of the peace for the county of Flint, to queries circulated by the commissioners, in favour of the union of Wales with the English circuits, *Rep. i. App. 399.*

**Robinson, William.** Communication from William Robinson, attorney, of Charterhouse-square, showing the causes of delay and expense in civil suits; opinion that the length of declarations should be abridged; special pleading abolished; mode of proceeding suggested against absent defendants; parties using initials instead of names proposed to be sued on such initials; the plea side of the Court of Exchequer should be opened to all attornies; the daily list of causes for trial should be confined to special jury causes or common jury causes only, *Rep. i. App. 610, 611.*

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*Scire Facias, Writ of.* Objects of this writ in cases of outlawry, *Rep. i. 91*—Upon this writ, and an alias sci. fa. being left in the sheriff's office, and both returned *nihil* without any other proceedings, except a rule for appearance, the plaintiff may sign judgment, and take out execution against the bail, *ib. 111, 112.*

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**SHERIFFS:**

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2. *Present State of the Law as respects the Liabilities of Sheriffs and their Officers*.
3. *Answers to Queries circulated by the Commissioners on the subject*.
4. *Propositions of the Commissioners for the Amendment of the Law*.

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3. *Answers to Queries circulated by the Commissioners on the subject*:

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*Shrewsbury Assize District.* Parts of Wales proposed to be added to this district, *Rep. i. 42.*

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#### SITTINGS OF THE COURTS:

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3. *After Term.*
4. *In London and Westminster.*
5. *In London and Middlesex.*
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##### 1. *In Banc:*

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**Detention of Goods.** Proposed regulation with respect to actions for detention or conversion of goods, *Rep. ii. 59.*

**Detinue.** Object of an action of detinue; it is very imperfectly adapted to secure the attainment of its object, *Rep. ii. 10*—It is very desirable that both this action and that of trover should be rendered more effective in compelling specific restitution of property remaining in the defendant's power, *ib.*

**Documents.** See *Verification of Documents.*

#### DOWER:

##### 1. *Present Law of Dower.*

##### 2. *Proposed Alterations.*

##### 1. *Present Law of Dower:*

The action of dower is less frequently resorted to than that of *quare impedit*, *Rep. ii. 7*—Subjects making it expedient that in actions of dower a suit in equity should be instituted, *ib.*—By such suit an arrangement is in most cases effected without any intervention of a court of law, *ib.*—Suggestion of an improvement upon the present remedy which the action of dower affords, *ib.*—Recommendation that the process now in use for commencing these actions shall be abolished, *ib.*—And that it shall be open to the plaintiff in any action of dower to commence the suit in any of the courts of record at Westminster, by writ of summons issuing out of such court, *ib.*

##### 2. *Proposed Alterations:*

Proposed regulation, that it shall be lawful for plaintiffs in actions of dower to bring their actions in any one of his Majesty's courts of record at Westminster, *Rep. ii. 57*—Proposal that every such action of dower shall be commenced by writ of summons issuing out of such court, *ib.*—And in such actions the same regulations with respect to the mode of compelling appearance, and the manner of appearance, shall be observed as have been recommended in the first report in respect of personal actions, *ib.*—Proposed form of writ of summons in dower, *ib.*

#### E.

**East, Sir E. H., Bart. M.P.** Late chief justice of Bengal; communication containing suggestions with reference to courts of common law; imputed defects; expense, &c.; and also remarks on some general matters of practice, *Rep. ii. 58-60.*

**Ejectment.** In all cases in which the law allows a claimant to sue at all for corporeal hereditaments and impropriate tithes, the right to maintain an action in the nature of ejectment ought to be allowed, *Rep. ii. 6*—All less convenient forms should be abolished, *ib.*—An ejectment, says Lord Mansfield, is an ingenious fiction for the trial of titles to the possession of land, *ib.*—In form it is a trick between two, to dispossess a third, by a sham suit and judgment, *ib.*—The artifice would be criminal unless the court converted it into a fair trial with the proper party, *ib.*—Recommendation of a form of action for the recovery of all corporeal hereditaments and impropriate tithes, more convenient and less artificial than the present action of ejectment, *ib.*—It is not desirable that any real actions for the recovery of incorporeal hereditaments should be retained, *ib.*—When those for the recovery of corporeal hereditaments are abolished, *ib.*

Proposal that the action of ejectment shall be discontinued, *Rep. ii. 57*—And that a form of action to be called a plea of land shall be used for enforcing the right to the possession of corporeal hereditaments or impropriate, *ib.*—In which action the possession, and also mesne profits to the time of final judgment, shall be recoverable, *ib.*—Proposition, that such actions, as to all proceedings thereon, shall be modelled with a view to preserve, without resort to any fiction, the advantages of an action of ejectment, *ib.*

See also *Personal Actions.*

**Equity Courts.** Letter from Mr. Ackoute Smyth, of Cork, containing observations upon the establishment and general effects of courts of equity, *Rep. ii. App. 64-67.*

*False*

**False and Vexatious Pleading.** Answers of various legal authorities to a query issued by the commissioners as to the best means of preventing false or vexatious pleading, *Rep.* ii. *App. Jervis* 5; *Sir James Scarlett* 7; *Comyn* 9; *Serjeant Lawes* 16; *Long* 21; *Bayley* 24; *Serjeant Peake* 28; *Wallace* 33; *Manning* 38.

**False Returns.** Proposal that the provisions of the statute of the 9th Anne, c. 20, s. 2, shall be extended to returns to all writs of mandamus, *Rep.* ii. 59.

**Fees.** See *Court Fees*.

**Feigned Issues.** Feigned issues are often found extremely useful in obtaining the decision of a jury on some particular question not then the immediate subject of any action at law, *Rep.* ii. 11—It is desirable that all such questions should be presented for decision in a less objectionable shape than that which has hitherto been adopted, *ib.*—Regulations proposed by the commissioners with regard to feigned issues, *ib.* 59.

**Forms of Action.** Answers of various persons to a question issued by the commissioners as to whether it is desirable that the forms of action should be kept distinct as they now are, *Rep.* ii. *App. Jervis* 4; *Sir James Scarlett* 5; *Comyn* 8; *Serjeant Lawes* 13; *Long* 19; *Bayley* 23; *Walton* 25; *Serjeant Peake* 27; *Dampier* 29; *Manning* 37.

## G.

**Gell, F. H.** Letter containing information as to the number of complaints entered in replevin in the eastern division of Sussex in the year 1823, and in each of the four following years, *Rep.* ii. *App.* 70.

## GENERAL ISSUE:

1. *Evil Consequences attendant upon the General Issue.*
2. *Alterations necessary in the present state of the Practice on General Issues.*
3. *Regulations proposed by the Commissioners.*
4. *Evidence upon the subject.*

### 1. *Evil Consequences attendant upon the General Issue:*

One of the ill consequences attendant upon the general issue is, that it is the business of the judge to extract the true point for decision from the proofs and allegations before him, *Rep.* ii. 46—Other inconveniences, though of less moment, result from this method of pleading, *ib.* 47—In comparison with the disadvantages resulting from the general issue, the inconveniences of special pleading are insignificant, *ib.*—Any extensive application of the general issue is a departure from the ancient and regular mode of special pleading, *ib.* 51.

### 2. *Alterations necessary in the present state of the Practice on General Issues:*

Recommendation that the use of general issues in certain actions be discontinued, and its place supplied by special pleas, *Rep.* ii. 4—Explanation of the principles upon which the commissioners think this change essential to the satisfactory administration of justice, *ib.*—One of the most important points which has presented itself in the course of the inquiry of the commissioners, is, whether it is expedient to continue the use of that kind of plea denominated the general issue, *ib.* 44—The present state of the practice on this subject requires alteration, *ib.* 45—With respect to the kind of alteration required, the views taken by different persons are surprisingly dissimilar, *ib.*

### 3. *Regulations proposed by the Commissioners:*

Regulation proposed, that non assumpsit shall be no plea in indebitatus assumpsit, *Rep.* ii. 89—Or in any case in assumpsit, where the promise would be sufficiently implied by law upon the facts stated in the declaration, *ib.*—That in other cases where non assumpsit be pleaded, no defence shall be admissible under it, but a denial of the promise itself in point of fact, *ib.*—Proposed regulation with regard to the form of denial in indebitatus assumpsit, *ib.*—Proposition that in debt on specialty or covenant, where non est factum is pleaded, no defence shall be admissible under it, but the denial of the execution of such a deed in point of fact, *ib.* 90—Regulation proposed, that in debt on simple contract, nil debet shall be no plea, *ib.*—But that the same form of denial shall be used as proposed with respect to indebitatus assumpsit, *ib.*—Proposal, that in trespass on the case, ex delicto, not guilty shall be no plea, *ib.*

### 4. *Evidence upon the subject:*

Answers of various legal authorities to questions issued by the commissioners, as to how far the general issue in assumpsit, debt, and trespass on the case, could be advantageously discontinued, *Rep.* ii. *App. Jervis* 4; *Sir James Scarlett* 6, 7; *Comyn* 8; *Serjeant Lawes* 13; *Long* 19, 20; *Bayley* 23; *Walton* 26; *Serjeant Peake* 27; *Dampier* 29; *Wallace* 32, 33; *Manning* 37.

## H.

*Hockley, Joseph.* Letter from Mr. Joseph Hockley, containing information respecting the number of plaints in the county court of Surrey, in each year from 1823 to 1827, both inclusive, and how determined, *Rep.* ii. *App.* 69.

## I.

*Interpleader.* Expediency of investing courts of common law with the power of interpleader, *Rep.* ii. 4.—By the common law, proceedings by interpleader and garnishment were not allowed in any personal action except that of detinue, *ib.* 24.—This form has of late much fallen into disuse, *ib.*—No practical advantage has been derived in modern times from proceedings by garnishment and interpleader, *ib.*—The only course now resorted to for the relief of a person sued or in danger of being sued by several claimants, is that of filing a bill to compel the parties, by the authority of equity, to interplead at law, *ib.* 24, 25.—Suggestions of the commissioners for the improvement of this system, *ib.* 25.—Proposed regulations of the commissioners with respect to interpleader, *ib.* 76, 77.

Opinions of various legal authorities as to what power it would be desirable to give the court in which the action is pending, in cases where bills of interpleader are now allowed by courts of equity, *Rep.* ii. *App.* *Jervis* 5; *Sir J. Scarlett* 7; *Comyn* 9; *Serjeant Lawes* 16; *Long* 21; *Bayley* 24; *Serjeant Peake* 28; *Dampier* 30; *Manning* 38.

## INTERROGATORIES :

1. *Expediency of investing Courts of Law with the power of examining Witnesses upon Interrogatories.*
2. *Regulations proposed by the Commissioners with respect to Interrogatories.*
3. *Answers to Queries circulated by the Commissioners upon the subject.*

1. *Expediency of investing Courts of Law with the power of examining Witnesses upon Interrogatories :*

The practice of filing bills in equity for discovery in aid, either of the plaintiff or defendant, is attended with very considerable expense, *Rep.* ii. 20.—It seldom happens that the answer, when obtained, can with advantage be read in evidence, *ib.*—In order to avoid this expense, it is desirable that the examination of parties should be allowed to be conducted under the immediate authority and control of the court in which the action is depending, *ib.* 21.—And to permit, not only the method of requiring an answer in writing to the interrogatories, but the method also of requiring the personal answer of the parties, *ib.*—Proposal that any plaintiff, after declaration, and any defendant after plea, shall be allowed to deliver interrogatories for the discovery of facts and documents material to the support and defence of the suit, *ib.*—This to be answered on oath by the adverse party, if resident within the jurisdiction of the court, *ib.*

Proposition, that the interrogating party shall have the option of requiring either an answer in writing, or on personal examination before an officer of the court, or other person to be appointed by order of a judge, *Rep.* ii. 21.—An examination so conducted would seldom be such, that the party interrogating could avail himself of it with advantage, *ib.* 22.—The great superiority of examination *viva voce* over that by written interrogatories, is lost in a great measure where the answers are not given in the presence of those who are to judge of the credit due to the witness, *ib.*—The party interrogated may introduce into his answers any matter explanatory of his admissions or denials, if relevant to the corresponding interrogatories, but not otherwise, *ib.*—It is intended that the expense of the proceeding for discovery should be at the costs of the party interrogating, *ib.* 23.—The party interrogated should not be required to travel more than ten miles from his own residence, *ib.*—If any of the answers be read in evidence, the party interrogated shall be entitled to require that the whole shall be read, *ib.*

Great difficulties are often experienced from the impossibility of obtaining the personal attendance of witnesses at trials, *Rep.* ii. 23.—Suggestions for remedying this evil, with explanations of the reasons for their absence in many cases, *ib.*—By whatever authority examinations out of court are appointed to be taken, there exists at present no compulsory process by which the attendance of witnesses upon such examinations can be enforced, *ib.* 24.

2. *Regulations proposed by the Commissioners with respect to Interrogatories :*

Regulations proposed by the commissioners with respect to the examination of parties upon interrogatories by way of discovery, *Rep.* ii. 70-73.—Regulations proposed relative to the examination of witnesses on interrogatories, *ib.* 73.—Proposed form of commission for the examination of witnesses on interrogatories, *ib.* 74.—Proposed form of the witness's oath, *ib.* 75.—Proposed form of the commissioner's oath, *ib.* 76.—Proposed form of the clerk's oath, *ib.*—Proposed form of the interpreter's oath, *ib.*

3. *Answers*

## INTERROGATORIES—continued.

3. *Answers to Queries circulated by the Commissioners upon the subject :*

Answers of several members of the bar to queries issued by the commissioners as to how far it would be desirable, in order to obtain the benefit of a discovery without having recourse to a court of equity, that the parties in a cause should be examined upon oath, either personally or by interrogatories, *Rep. ii. App. Jervis 5 ; Sir J. Scarlett 7 ; Comyn 9 ; Serjeant Lawes 17 ; Long 21 ; Bayley 24, 25 ; Walton 26, 27 ; Serjeant Peake 28 ; Dampier 30 ; Wallace 33 ; Manning 39.*

*Issues.* See *Damages.*    *Feigned Issues.*    *General Issue.*

## J.

*James, Edward L.* Letter from Mr. Edward L. James, stating that the only serious objection against the Welsh judicature appears to be precipitation in the action by concessit, *Rep. ii. App. 71.*

*Jervis, T., K. C.* Answers from, to queries circulated by the commissioners relative to the limitation of the number of counts and pleas ; costs of issues ; form of action ; forms of the general issues ; journey of defendants in actions on contracts ; payment of money into court ; replevin, &c., *Rep. ii. App. 4, 5.*

*Joinder of Defendants.* Answers of several barristers and others to questions circulated by the commissioners relative to joinder of defendants, *Rep. ii. App. Jervis 4 ; Sir J. Scarlett 7 ; Comyn 9 ; Serjeant Lawes 13, 14 ; Long 20 ; Bayley 23 ; Walton 26 ; Serjeant Peake 27 ; Dampier 29, 30 ; Wallace 33 ; Manning 37.*

*Jones, Richard.* Extract of letter from Mr. Richard Jones, attorney, Clements-inn, offering suggestions on the indorsement of bailable process and writs of execution ; suggestions for making officers special ; with regard to Nisi Prius ; costs ; and also suggestions respecting the Insolvent Court, *Rep. ii. App. 64.*

*Jones v. Cowley.* Reference to the case of *Jones v. Cowley* (4 Barn. & Cress. 445), as an example of pleading upon variance, *Rep. ii. 87.*

*Judgment.* Remarks and propositions with respect to judgments delivered in vacation, *Rep. ii. 27*—Resolutions proposed by the commissioners with regard to delivering judgment in vacation, *ib. 81*—Proposed form of schedule, being form of bond to stay final judgment after verdict for plaintiff, *ib. 83.*

## L.

*Lawes, Mr. Serjeant Edward.* Answers from, to queries circulated by the commissioners, pointing out the evils arising from the present system of pleading ; remedy suggested ; variety of counts and pleas ; doctrine ofoyer ; interrogatories ; forms of action ; general issue ; non-joinder of defendants ; payment of money into court ; venue ; form of protestation ; actions of trespass ; accounts ; discoveries ; real actions, &c., *Rep. ii. App. 10-17.*

Communication from Mr. Serjeant Edward Lawes recommending the abolition of general issues, and substituting other forms in lieu of them ; suggestions for altering the form of general issues, if the practice of using them be retained ; and for limiting the effect of them ; special pleas thereof preferred to general issues or notices, *Rep. ii. App. 53, 54.*

*Le Blanc, Thomas.* Communication from Mr. Thomas Le Blanc, master of the King's Bench, containing an account of the allowances to witnesses and attornies, *Rep. ii. App. 62.*

*Lindsay, Ralph.* Letter from Mr. Ralph Lindsay, attorney, containing suggestions with regard to the amendment of the practice of the courts of law, *Rep. ii. App. 73.*

*Local Courts.* Communication from Mr. A. Smyth, containing suggestions relative to the establishment of local courts, *Rep. ii. App. 67.*

*Long, George.* Answers to queries relative to the effect of the principles of the present system of pleading ; number of counts and pleas ; replications ; written instruments ; costs ; form of actions ; general issue ; joinder of defendants ; payment of money into court ; actions of trespass ; false and vexatious pleadings ; interpleaders ; discoveries ; interrogatories ; real actions, &c., *Rep. ii. App. 18-22.*

*Loxley, T. A.* Letter from Mr. T. A. Loxley, clerk of the papers for the Poultry Compter, London, containing an account of the number of plaints entered in replevin in the Sheriff's Court for the Poultry Compter, from the year 1823 to the year 1828, *Rep. ii. App. 69.*

**Lumley, W. G.** Communication from Mr. W. G. Lumley, containing observations and suggestions on the subject of pleading; recommendation of the abolition of the different forms of actions; unnecessary multiplication of counts and pleas; abolition of the general issue recommended; suggestion with respect to pleadings in trespass; new form of pleading suggested, *Rep. ii. App. 39-45.*

## M.

**Mandamus, Writs of.** The writ of mandamus, which is the proper remedy for compelling obedience to Acts of Parliament and the King's charters, and for preventing disorders from failures of justice, could in former times only be enforced by an action on the case for false return, *Rep. ii. 11*—Proposition to extend the powers given by the second section of the 9th Queen Anne, c. 20, to all writs of mandamus, *ib. 12*—Proposal that the provisions of the statute of the 9th Anne, c. 20, s. 2, shall be extended to returns to all writs of mandamus, *ib. 59.*

See also *Acts of Parliaments. False Returns.*

**Manning, James.** Answers of Mr. James Manning, barrister-at-law, to queries circulated by the commissioners relative to the principle of the present system of pleading, *Rep. ii. App. 35-39.*

**Maybery, Thomas, of Brecon.** Extract of letter from Mr. Thomas Maybery, prothonotary, Brecon, respecting the allowances to witnesses in Wales, *Rep. ii. App. 63.*

**Multiplication of Counts, &c.** See *Counts and Pleas.*

**Murray, M'Gregor, and M'Gregor, Messrs., of Glasgow.** Communication from Messrs. M'Gregor, Murray, and M'Gregor, containing suggestions in the case of complicated questions of accounts, *Rep. ii. App. 61.*

**Mutual Accounts.** See *Arbitrations, 1.*

## N.

**Non Assumpsit.** Proposal of the commissioners that non assumpsit shall be no plea in actions of indebitatus assumpsit, *Rep. ii. 48*—Nor in any case of assumpsit, where the promise would be sufficiently implied by law, upon the facts stated in the declaration, *ib.*

## P.

## PAYMENT INTO COURT :

1. *The extension of the right of Payment into Court recommended.*
2. *Remarks made and Regulations proposed by the Commissioners on the subject.*
3. *Answers to Queries issued by the Commissioners with respect to Payment into Court.*

1. *The extension of the right of Payment into Court recommended:*

Recommendation of an extension of the right of tendering money before action brought, *Rep. ii. 4.*—And also that of paying money into court, *ib.*—Remarks, observations, suggestions, and recommendations of the commissioners relative to tender and payment of money into court, *ib. 52-55*—As the law at present stands, a person indebted to another to some extent, but disputing the amount claimed, is at liberty to tender to the latter, before action commenced, the sum he allows to be due, *ib. 52*—By this tender he throws upon his adversary the burthen of proving that more is due, at the risk of costs in case of failure, *ib.*

It has been suggested to the commissioners, from several quarters, that this privilege ought to be much extended, *Rep. ii. 52*—Actions of trespass to land and actions on the case are frequently brought for an act done purposely to try some right, in which instances the practice of payment of money into court is not likely to be applied, *ib. 53*—In cases of injuries to the person, arising from negligence or accident, as well as in cases of injuries to property, the amount of reparation is fair matter of dispute, at the peril of costs on either side, *ib.*—It has been suggested to the commissioners that a plea of tender or payment of money into court, ought not to operate as an admission by the defendant of the cause of action alleged, *ib. 54*—It seems, however, to the commissioners that it ought to have that effect, *ib.*

2. *Remarks*

## PAYMENT INTO COURT—continued.

2. *Remarks made, and Regulations proposed by the Commissioners on the subject :*

Regulations proposed by the commissioners with respect to tender and payment into court, *Rep.* ii. 97. 98—Examples of pleading; tender and payment of money into court, *ib.* 98—Examples of pleading; plea of tender in an action for damages, *ib.*—Plea of tender of goods in trover, *ib.* 99—Plea of tender of money where goods parted with, *ib.*—Plea of tender in action on bond for performance of agreement where the declaration shows a breach, *ib.*—The like plea in bar of damages, *ib.* 100—Plea of payment of money into court sufficient to satisfy the whole demand, *ib.*—Plea where the defendant brings money into court, as to part, and pleads over as to the residue, *ib.*—Plea of payment into court in trover, where the goods are deposited with some persons by order of the judge, *ib.*—Plea of payment of money into court in trover, where the goods are parted with, *ib.*—Replication, that the goods were in the possession, &c. of the defendant, *ib.* 101.

3. *Answers to Queries issued by the Commissioners with respect to Payment into Court :*

Answers of various parties to queries circulated by the commissioners with regard to the payment of money into court, *Rep.* ii. *App.* *Jervis* 4; *Sir J. Scarlett* 7; *Comyn* 9; *Serjeant Lawes* 14; *Long* 20; *Bayley* 24; *Walton* 26; *Serjeant Peake* 28; *Dampier* 30; *Wallace* 33; *Manning* 37.

*Peake, Mr. Serjeant.* Answers to queries relative to the present system of pleading; the variety of counts and pleas; the form of actions; general issue; joinder of defendants; payment of money into court; actions of trespass; false and vexatious pleadings; interpleaders; discoveries; interrogatories; real actions, &c., *Rep.* ii. *App.* 27, 28.

*Pemberton, John.* Letter from Mr. John Pemberton, barrister-at-law, to the commissioners, submitting observations on the practice of the superior courts of common law, *Rep.* ii. *App.* 78.

*Personal Actions.* Suggestions for the abolition of some forms of personal actions, *Rep.* ii. 3—Suggestions for the improvement of some personal actions, *ib.*—Recommendation of a form of action unincumbered by the fictions of ejectment, *ib.* 4—But in other respects framed on the same model, for the trial of title to all corporeal hereditaments and impropriate tithes, *ib.*

*Plea of Land.* “A plea of land” is an expression by which actions for the recovery of real property are commonly described in the warrants which authorize attorneys to appear for parties to such actions, *Rep.* ii. 13—Recommendation, that for the recovery of all corporeal hereditaments and impropriate tithes, where the claimant is entitled to sue at law for immediate possession, one form of action only shall be used, *ib.*—Proposal, that the claimant shall be allowed to bring the action in his own name immediately against the tenant in possession, *ib.*—This to be done by a writ of summons, issued out of any one of the courts of record at Westminster, *ib.*—Proposition, that in a plea of land the plaintiff may allege, generally, that he is entitled to the possession, *ib.* 14—Proposal, that the defendant, by his plea, shall be allowed to deny generally the title alleged in the declaration, *ib.*—Or to deny that he withholds possession, *ib.*—But that he shall not be allowed to deny both the title alleged by the plaintiff and the withholding of possession, *ib.* 14, 15.

Proposition, that the plaintiff should be allowed to sue as well in his own right as in right of any other person, under whom he claims a beneficial interest, *Rep.* ii. 15—Proposition, that a provision should be made that the right of the plaintiff to recover should not be defeated by the proof of the existence of any term of years, *ib.*—Unless it shall be shown that such term is vested in some person who holds the same adversely to the plaintiff, *ib.*—Or unless the defendant, at the time of plea pleaded, shall have given notice to set up the same as a defence to the action, *ib.*—In the proposed regulations respecting pleas of land, the commissioners have adopted the periods of limitation for the recovery of land recommended in the report on real property, *ib.* 16.

Proposed regulations of the commissioners with respect to the plea of land, *Rep.* ii. 60–64—Proposed form of summons in pleas of land, *ib.* 65—Proposed form of declaration in plea of land, *ib.*—Proposed form of particulars of demand in pleas of land, *ib.*—Proposed form of plea, *ib.*—Proposed form of postea in pleas of land, *ib.* 66—Proposed form of judgment in pleas of land, *ib.*—Proposed form of writ of possession, and fieri facias for damages and costs, *ib.*—Proposed form of bond and condition, where the defendant in a plea of land has been required, by order of a judge, to give security for damages and costs, *ib.*—See also *Ejectment*.



## PLEADING:

1. *Regulations suggested by which the Forms and Language of Pleading may be abridged and simplified.*
2. *Pleading in Vacation.*
3. *Examples of Pleading.*
4. *Questions circulated by the Commissioners on Pleading, with Answers to the same, and Communications on the subject.*

1. *Regulations suggested by which the Forms and Language of Pleading may be abridged and simplified:*

Not only in the mode in which the pleadings are recorded, but in the style in which they are framed, there is much that is in the nature of mere formal entry, *Rep. ii. 32*—The introduction of this tends needlessly to encumber and lengthen the allegations, *ib.*—Not that the different formulæ are in any case without a substantial meaning; they always seem to mark the character and tendency of the allegation, *ib. 32, 33*—This useful subject may however be quite as well attained without the insertion of such of the formulæ as are of a familiar and ordinary kind, *ib. 33*—The recital of the writ, and allegation of the custody of the marshal, or of being debtor to the King at the beginning, and the allegation of quo minus, and production of suit and pledges at the end of the declaration, are now useless, and ought to be discontinued, *ib.*—The formula called a protestation might be laid aside, *ib.*—Recommendation of the commissioners, in addition to the specific improvements suggested, of the adoption of some regulation of a general kind, tending to promote brevity and simplicity in the style of allegation, *ib. 34*—Regulations proposed by the commissioners relative to continuances, &c., and the style and language of pleading in general, *ib. 83.*

2. *Pleadings in Vacation:*

Expediency of allowing pleadings to proceed, and final judgment to be signed, in vacation or in term, without distinction, *Rep. ii. 4*—Suggestions with respect to pleadings in vacation, *ib. 27*—Regulations proposed by the commissioners with regard to pleading in vacation, *ib. 81.*

3. *Examples of Pleading:*

Example of pleading; declaration in assumpsit; first count on a bill of exchange, *Indorse v. Acceptor, Rep. ii. 91*—Second count, indebitatus assumpsit for goods sold, *ib.*—Pleas denying the whole declaration; postea, for plaintiff finding all the issues for him, and judgment accordingly, *ib.*—Examples of pleading; declaration in assumpsit, on bill of exchange, and for goods sold, &c., *ib. 92.*

Examples of pleading: declaration in assumpsit for goods sold, *Rep. ii. 92*—Declaration in assumpsit for bill of exchange and goods sold, *ib. 93*—Declaration in assumpsit on bill of exchange, &c.; plea, that the bill was given to secure the balance of an account, and that the balance has been paid, *ib. 94*—Declaration in assumpsit on warranty of a horse; plea, that the horse was sound, *ib.*—Declaration in debt: first count, on a bond; second count, for goods sold, &c.; pleas, to first count, infancy; to second count, denial of debt, *ib. 95*—Declaration in trover; pleas in denial, *ib.*—Declaration in trespass on the case for obstructing a highway, per quod; plaintiff's carriage was overturned; pleas in denial, *ib. 96*—Declaration in trespass on the case against a carrier for loss of a box; plea, that defendant gave notice, limiting his responsibility, *ib.*

4. *Queries circulated by the Commissioners on Pleading, with Answers to the same, and Communications on the subject:*

Questions on pleading, and on certain matters of practice, issued by the commissioners, *Rep. ii. App. 1-3*—Written answers received to the questions circulated by the commissioners on pleading, and on certain matters of practice, *ib. 4 et seq.*—Answers to queries circulated by the commissioners with respect to the present system of pleading, *Rep. ii. App. Sir J. Scarlett 5; Comyn 8; Serjeant Lawes 10; Long 18; Bayley 22; Dampier 29; Wallace 31; Munning 35.*

Communication from Mr. W. G. Lumley, barrister-at-law, containing observations relative to the present system of pleading, *Rep. ii. App. 39*—Communication from Sir William Draper Best, Lord Chief Justice of the Court of Common Pleas, containing hints for the amendment of the law relative to the prosecution of civil suits, *ib. 46.*

See also *Continuances. Counts and Pleas. False and Vexatious Pleading. General Issue. Interpleader. Payment into Court. Plea of Land. Special Pleading. Variance.*

*Pleas. See Counts and Pleas.*

*Possession of Land. See Ejectment.*

*Prohibition.*

**Prohibition.** The form of proceeding in prohibition where an action is commenced with a view to obtain a solemn determination of the plaintiff's right to the interposition of the court, is of a fictitious character, *Rep. ii. 12*.—The real grounds of the plaintiff's complaint might be set forth without resort to fiction, *ib.*—Any suggestion previous to the motion for prohibition might be dispensed with, *ib.*—All the facts necessary to entitle the plaintiff to his writ would be verified in the affidavits made in support of the motion in the first instance, *ib.*—The provisions contained in the 2 & 3 Edw. 6, c. 13, s. 14, might be therefore repealed, *ib.*—Proposed regulations of the commissioners with respect to writs of prohibition, *ib. 59*.—Proposal, that so much of an Act 2 & 3 Edw. 6, c. 13, intituled "An Act for the payment of Tithes," as relates to the prohibition, shall be repealed, *ib.*—See also *Acts of Parliament*.

**Protestations.** Opinions of various authorities as to the use of retaining the present form of protestation, if a provision be made that parties shall no longer be concluded in a subsequent action as to facts averred and not traversed in a former action, *Rep. ii. App. Jervis 5; Sir J. Scarlett 7; Comyn 9; Serjeant Lawes 15; Long 20; Bayley 24; Walton 26; Dampier 30; Wallace 33; Manning 38.*

## Q.

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*Ca. Sa. & Fi. Fa.* (America). The option of issuing a ca. sa. in the first instance, provided for by Act of Congress, gives the creditor a great hold on the anxieties of an embarrassed debtor, and an invidious preference in his arrangements, *Rep.* iii. *App.* 215—In Pennsylvania it is usual in cases of debt to issue both writs concurrently, with instructions to execute the ca. sa. only in the event of the defendant failing to point out a subject of levy—After such failure he cannot disengage himself from arrest by showing property, *ib.*—An Act of Congress expressly declares that where different kinds of execution are issuable in succession, a ca. sa. being one, the plaintiff shall have his election to take out the ca. sa. in the first instance, *ib.*

*Certificated Conveyancers.* Evils arising from the mal-practices of this branch of practitioners, *Rep.* iii. *App.* *Anderton* 216.

*Certificates.* See *Attornies.*

*Chamber Business.* Attendance of the judges at chambers; important nature of the business transacted; inconvenience at present sustained from defects incident to the jurisdiction and practice, *Rep.* iii. 42, 43—Regulations proposed for obviating existing inconveniences, *ib.* 43—Proposed regulation that one of the fifteen judges should sit in rotation, *ib.* 43. 81—And that affidavits be transmitted to the officer of the court with whom such affidavits would have been filed if the proceeding had been by way of rule instead of summons, *ib.* 43—Proposition, that offices of a proper description be provided, *ib.*—And that the order of the judge be of full force, without making the same a rule of court, *ib.*—Proposition, that the judge have power to award costs, and to enforce payment thereof by attachment, *ib.*—Query circulated by the commissioners as to whether any improvement can be suggested with respect to the practice before a single judge on summons, or with respect to motions in court, *Rep.* iii. *App.* 10—Answers thereto by serjeants and barristers-at-law, special pleaders, and others, *ib.* 14 *et seq.* 212—Also query as to whether any improvement can be suggested with respect to the practice before a single judge upon summons, or in the practice with respect to motions in court, *ib.* 81—Answers thereto by attornies, solicitors, and others, *ib.* 83 *et seq.*

Suggestions as to one judge performing the duties usually performed at chambers, but with more solemnity, *Rep.* iii. *App.* *M<sup>r</sup> Dougall* 245—Advantages resulting from the new mode of conducting chamber business, *Le Blanc* 261.

*Chapman, Thomas*. Assistant Master, King's Bench; answers to the queries of the commissioners on various matters of practice, *Rep.* iii. *App.* 167-169.

*Charnock, R.* Attorney; answers to questions on various matters of practice, *Rep.* iii. *App.* 121-124.

*Choice of Courts.* Suggestions that plaintiffs should have the choice of courts, *Rep.* iii. *App.* A. *M<sup>r</sup> Dougall* 245.

*Clark & Son, Messrs.* Communication from Messrs. Clark & Son, attornies, Lancaster, relative to the evils of the law in cases of distress damage feasant, *Rep.* iii. *App.* 261—Further communication on the subject of distress and replevin, *ib.* 262.

*Clayton, John.* Letter from Mr. Clayton, of John-street, Bedford-row, to the commissioners, suggesting alteration in practice after declaration, *Rep.* iii. *App.* 159.

*Collett, Kenrick.* Communication from, addressed to Sir J. Scarlett, M.P., Attorney-general, and by him transmitted to the commissioners, suggesting means of obtaining legal adjudication with reasonable expedition, and at moderate expense, *Rep.* iii. *App.* 254.

*Common Law* (America). In Pennsylvania the liability to execution is, as a general rule, determined by the common law, *Rep.* iii. *App.* 214.

*Common Law Offices.* The common law offices are in bad condition, and distributed in various places instead of being under one roof, *Rep.* iii. *App.* *Anderton* 223.

*Computation of Principal and Interest.* Where damages depend upon a mere computation of principal and interest on a bill of exchange or promissory note, a rule is obtained that it be referred to an officer to make such computation, *Rep.* iii. 63.—This mode of reference might be extended to many cases with a saving of time and expense, *ib.* 64.—Proposition of the commissioners, that upon interlocutory judgment in action of assumpsit, debt on bill of exchange, promissory note or banker's check, action on award, of covenant, or debt on covenant, where brought for non-payment of money only, the Master or prothonotaries shall compute the principal and interest as of course, without rule or order for the purpose, *ib.* 64. 88.

*Computation of Time.* It would be a highly convenient regulation if one uniform rule were given for computation of the number of days allowed for pleadings and other proceedings, and that such days be computed the first exclusively, and the last inclusively, and that Sundays be excluded from the computation, *Rep.* iii. 44.—Regulation proposed on the subject, *ib.* 82.

*Comyn, Samuel.* Barrister-at-law; answers to questions circulated by the commissioners on various matters of pleading and practice, *Rep.* iii. *App.* 12–15.

*Comyn's Digest.* Reference to Comyn's Digest, showing the subtlety and variety of distinctions on the subject of profert and oyer, *Rep.* iii. 46.

*Concessit Solvere.* Advantage that would be derived by the introduction of this form of action; copies of pleadings therein *Rep.* iii. *App.* *Davies* 93.

*Contractors, Joint.* Question circulated by the commissioners as to whether upon the death of a joint contractor the action should be against the survivor and the executor or administrator jointly; and whether there is any objection to such a course, *Rep.* iii. *App.* 9.—Answers thereto by serjeants and barristers-at-law, special pleaders, and others, *ib.* 12 *et seq.* 210.

*Conveyancers.* Copies of handbills, advertisements, and cards, issued by certificated conveyancers and others, showing to what extent they practise as attornies, *Rep.* iii. *App.* *Anderton* 218.—See also *Certificated Conveyancers.*

*Copies of Proceedings.* See *Office Copies.*

*Copyhold Property.* See *Stewards of Manors.*

*Cooke & Sons, Messrs.* Attornies, St. Austle; answers to queries issued by the commissioners on various matters of practice, *Rep.* iii. *App.* 120, 121.

*Corley, B.* Communication from, addressed to Sir J. Scarlett, M.P., Attorney-general, and by him transmitted to the commissioners, on the subject of arrest and insolvency, *Rep.* iii. *App.* 255, 256.

*Costs.* Regulation proposed, that judges shall have power to award costs, and enforce payment thereof by attachment, *Rep.* iii. 81.—Regulations proposed as to the allowance of costs to plaintiffs and defendants in certain actions, *Rep.* iii. *App.* *Anderton* 222.

Answers to a question circulated by the commissioners, requesting suggestions for the improvement of the law of costs between attorney and client, *Rep.* iii. *App.* 1. 3. 5. 6. 8. 51. 80. 83 *et seq.*—Questions issued by the commissioners as to whether it is important to consolidate and amend the several statutes as to costs; whether executors plaintiffs should be liable to costs de bonis testatoris; in what cases they should be liable de bonis propriis; whether costs should be given in quære impedit; and as to whether the law with respect to double and treble costs requires alteration, &c., *ib.* 1. 12. 80.—Answers thereto, *ib.* 3. 5. 6. 8. 15. 78. 83. 213. 269.—Whether any inconveniences result from the provisions with respect to the delivery of the attorney's signed bill, and the taxing thereof, *ib.* 1. 80.—Answers thereto, *ib.* 3. 5. 6. 8. 82 *et seq.*

Questions circulated by the commissioners, whether, in lieu of the different provisions now in force for restraining the plaintiff's costs in frivolous actions, it would be expedient to establish one general rule, that in all actions of trespass or tort, where the jury find under 40s., the plaintiff shall recover no costs unless the judge certify; and as to how far any other provision would be preferable, *Rep.* iii. *App.* 1. 80.—Answers thereto, *ib.* 3. 6, 7, 8. 52. 83 *et seq.*—How far it would be practicable and desirable to diminish to any and what extent the difference which now exists between the allowance of costs, as between attorney and client and between party and party, *Rep.* iii. *App.* 1, 2. 80.—Answers thereto, *ib.* 3. 6, 7, 8. 83 *et seq.*—Also question as to whether the present law of costs provides a sufficient check against improper denials of facts, and the consequent expense and delay of proving them; whether it is desirable to provide that the costs of each issue shall be taxed against the party failing thereon, whatever may be the event of the cause; and also whether, on every issue found for the party prevailing in the suit, costs shall be taxed for him, giving discretion to the taxing officer as to those not found for him, *Rep.* iii. *App.* 2. 81.—Answers thereto, *ib.* 4. 6, 7, 8. 52. 83 *et seq.*—Further questions with a view to obtaining suggestions for improvement with respect to the practice on taxation between party and party, *ib.* 2. 81.—Answers thereto, *ib.* 4. 6, 7, 8. 83 *et seq.*

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*Cotterill, W. H.* Attorney; answers to questions circulated by the commissioners on various matters of practice, *Rep. iii. App. 173-176.*

*Counsel.* Query issued by the commissioners, whether counsel's fees are too large or otherwise; and whether they require any regulation, *Rep. iii. App. 1. 80*—Answers thereto, *ib. 3. 5, 6, 7. 50. 82 et seq.*—Objection to the large fees paid to counsel and their clerks, *Rep. iii. App. Anderton 216. 223.*

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There is no advantage in retaining the signature of counsel to special pleadings; its discontinuance recommended, *Rep. iii. 44*—The practice of requiring counsel's hand to double pleading should be abolished, *Rep. iii. App. Anderton 222.*

See also *Speeches of Counsel.*

*Court Fees.* The court fees paid on trials increase the expense of common law proceedings, *Rep. iii. App. Anderton 216.*

*Courts of Justice (America).* In every State there is a court organized under the authority of the general government, having jurisdiction over controversies between a citizen of the State where the trial is to be had, and a citizen of a different State, *Rep. iii. App. 215.*

*Courts of Equity.* There is no reason why a court of law should not exercise the same jurisdiction, and restrain violations of legal rights, in the same cases in which an injunction now issues for that purpose from the courts of equity, *Rep. iii. 18*—A court of law could not give full relief, with its present defective powers, from want of means to compel a discovery, *ib. 19*—Great advantage and convenience that would attend this arrangement; greater competency of common law judges to decide questions of law which the application for an injunction may involve, *ib.*—No new form of suit is necessary in order to confer this jurisdiction on the courts of law; the extended application of the writ of prohibition is alone required, *ib.*—Recommendation that courts of law should grant writs of prohibition to restrain waste, &c., in lieu of an injunction in equity; provisions necessary for giving effect to the writ, *ib. 19, 20.*

The practice of the courts of equity, by way of injunction, extends not only to the protection of equitable rights, but of those also for the violation of which an action lies at common law, *Rep. iii. 18*—Inconvenience arising from the collision of the equitable with the legal jurisdiction in cases of injunction; necessity for the immediate introduction of a regulation for remedying this evil in the courts of equity, *ib. 20*—The plan suggested for obtaining a discovery at law would effectually redress the grievance, *ib.*

*Courts of Law.* See *Choice of Courts.* *Exchequer Court.* *Lord Mayor and Sheriffs' Courts.* *Palace Court.* *Practice of the Courts.* *Requests, Court of.* *Superior Courts.*

*Covenant.* Regulation proposed, that the present form of action as to covenant be retained, *Rep. iii. 7. 71.*—See also *Pleading, III.*

*Creditors.* See *Debtor and Creditor, Law of.* *Meetings of Creditors.*

*Criminal Business.* Criminal business should not be confined to the King's Bench, *Rep. iii. App. M'Dougall 245.*

*Crown Prosecutions.* Alterations in practice relative to Crown prosecutions suggested, *Rep. iii. App. Crowther 151.*

*Crown Side of the King's Bench.* It should be thrown open to the profession at large, and not limited to clerks in court, *Rep. iii. App. Anderton 221.*

*Crowther, P. W.* One of the secondaries of the city of London; answers to queries circulated by the commissioners on various matters of practice, *Rep. iii. App. 149-151*—Communication from P. W. Crowther, containing suggestions upon various matters of practice, *ib. 250-253.*

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*Davies, E.* Attorney, Cardigan; answers to certain questions circulated by the commissioners relative to various matters of practice, *Rep. iii. App. 93.*

*Dax, T.* Deputy clerk of the pleas of the Exchequer; answers to queries issued by the commissioners on the subject of costs, *Rep. iii. App. 7, 8.*

*Death of Parties.* The death of a sole plaintiff or defendant abates the suit, except in cases provided for by the statutes 17 Car. 2, c. 8, and 8 & 9 Will. 3, c. 11, s. 6, 7; provisions of those statutes, *Rep. iii. 16*—Under the statute 4 Edw. 3, c. 7, executors may maintain actions ex delicto, for every species of injury to personal property committed in the lifetime of the testator, by which it has been rendered less beneficial to the executor, *ib. 17*—But for injuries to real property, committed in the lifetime of the

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owner, no action ex delicto can be supported by personal representatives or by the heir or devisee, *Rep.* iii. 17.—Objectionable state of the law with respect to the effect of the death of parties upon the right of action, in cases of injuries to real property, *ib.*—Recommendation, that an action for injuries to land should survive to the executor, *ib.*—Regulation proposed for protecting suits from abatement by death after issue joined, and before verdict, or after interlocutory judgment, and before final judgment, provided the right of action survives, *ib.* 17. 74.

*Debt.* The present form of action as to debt proposed to be retained, *Rep.* iii. 7. 71.—Regulation proposed, that in debt on bond for a penal sum, the plaintiff be obliged to state the condition in his declaration, and allege a breach or breaches, *ib.* 85.

See also *Affidavits*, 2.      *Amount of Debt.*      *Arrest.*      *Assumpsit for Debt.*  
*Judgment*, 2.

*Debtor and Creditor, Law of.* Observations on the law of debtor and creditor, addressed to the commissioners by Thomas Lott, of Bow-lane, city, solicitor, *Rep.* iii. *App.* 147–149.—See also *Poor Debtors*.

*Debtors (America).* Question circulated by the commissioners, as to whether there is any law in the nature of the English Insolvent Act, by which a person imprisoned for debt can obtain his discharge, after any and what period, and upon any and what conditions, from imprisonment; and after he has been imprisoned for a certain period, is it in the power of a creditor to compel him to disclose and surrender his whole property for payment of his debts, where the debtor does not himself think fit to petition for his discharge as an insolvent, *Rep.* iii. *App.* 214.—Answer by Richard Biddle, *ib.* 215.

*Debtors' Prisons.* See *Lock-up Houses and Gaols*.

**DECLARATIONS:**

1. *Generally.*
2. *In Assumpsit.*
3. *In Detinue.*
4. *On Penal Statutes.*
5. *In Quare Impedit.*
6. *In Replevin.*
7. *In Trespass.*

1. *Generally:*

Regulations proposed, that the time for the declaration be within six months after the defendant's appearance; but if defendant is in custody, to be within fourteen days, *Rep.* iii. 43. 81.—That until defendant sign judgment of non pros., the plaintiff be at liberty to declare at any time within the year after the defendant's appearance, *ib.*—That no judgment of non pros., for want of declaration, be signed until four days after demand of declaration; defendant not to be entitled to demand a declaration until an appearance has been entered, *ib.* 44. 81.—The declaration should be short, stating intelligibly the cause of action, with a bill of parcels annexed, showing the exact sum sought to be recovered; mode of filing and delivering suggested, *Rep.* iii. *App.* Collett 254.

2. *In Assumpsit:*

Statements in declarations in assumpsit, when special; there is no reason for altering the formula, or for departing in general from the present manner of declaring, except as mentioned in the second report, that of restricting the plaintiff to one count on each separate cause of action, *Rep.* iii. 51.—The insertion in the declaration of all the items of the plaintiff's demand would make the pleadings more intelligible, but would be found inconvenient; the bill of particulars answers its purpose; alteration recommended, *ib.* 52.

3. *In Detinue:*

The ordinary count, upon a supposed finding, should be discontinued, and the declaration should state the real mode in which the goods came into the defendant's hands, *Rep.* iii. 60.—Proposal, that the count upon a supposed finding shall be discontinued, *ib.* 86.

4. *On Penal Statutes:*

No alteration is necessary in declarations on specialty and penal statutes, except that in actions for a penal sum the declaration should state the conditional part of the deed, and allege a breach or breaches; advantages and disadvantages of the present practice, *Rep.* iii. 52, 53.—Present practice adopted; mode of averment recommended; where that cannot be adopted, one count on each distinct transaction recommended; advantages of this course, *ib.* 53.—It would be a considerable improvement if the declaration stated in the margin the statute on which the action is framed, specifying the year, chapter, and section, *ib.* 53. 85.

5. *In*

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5. *In Quare Impedit* :

Causes of the declarations in quare impedit usually being long; no alteration can be recommended, *Rep.* iii. 61.

6. *In Replevin* :

Proposition of the commissioners, that the declaration be confined to a simple complaint that the defendant took the cattle or goods of the plaintiff, and detained them till replevied, without a particular statement of the place in the county where they were taken, *Rep.* iii. 60. 86.

7. *In Trespass* :

Declarations in actions of trespass are generally drawn at greater length than necessary, and should be curtailed; the proper form could be easily settled by rule of court, according to the method adopted with respect to declarations for goods sold, *Rep.* iii. 54. 59. 85—They should always state the name or the abutments of the premises in which the trespass is alleged to have been committed, *ib.* 54—Proposed regulation to this effect, *ib.* 85.

*Deeds. See Agreements and Deeds.*

*Delivery of Issue.* Proposition of the commissioners, that where the plaintiff shall neglect to make up and deliver the issue, the defendant shall serve him with notice to do so in four days, and on failure to do so may sign judgment of non pros., *Rep.* iii. 50.

## DEMURRERS :

1. *Generally.*2. *Regulations proposed with respect to Demurrers.*3. *Answers to Questions circulated by the Commissioners on the subject of Demurrers.*1. *Generally* :

Rule in pleading that a party cannot at once demur and plead to the same matter; tendency of this rule; respects in which it is ill-regulated, *Rep.* iii. 25, 26—All questions of law affecting the merits ought to be disposed of on demurrer before any issue in fact is carried down for trial, *ib.* 26, 27—No trial of fact ought to take place where an argument in law will suffice, *ib.* 26—Difference prevailing between the practice of the King's Bench, and the Common Pleas, and the Exchequer, as to the costs of demurrer; expense and inconvenience of the former, *ib.* 27—Costs incurred by the necessity of taking out a rule to join in demurrer, and for a concilium, and by the practice of entering the issue; these forms may be dispensed with, *ib.*—Decided objection to simultaneous plea and demurrer, *ib.* 29, 30—The practice of retarding judgment and execution by sham pleas and sham demurrers deprecated, *ib.* 30—Abuse in the King's Bench with respect to the substitution of general for special demurrers in the demurrer book, without leave of the court, *ib.*

2. *Regulations proposed with respect to Demurrers* :

Regulations proposed by the commissioners, that demurrers and pleadings be not filed, *Rep.* iii. 27. 77—That no rule to join in demurrer be required, *ib.*—Nor signature of counsel to the joinder, *ib.* 27. 77, 78—Proposition, that the issue or demurrer book shall in no case be made up by any officer of the court, but by the plaintiff or his attorney only, or in his default, by the defendant or his attorney, *ib.* 28. 77—That no entry of the issue shall be required previously to the entry of final judgment, *ib.*—That no motion or rule for a concilium be required, *ib.*

Proposition, that after argument of general demurrer amendment of pleading should be allowed as of course, *Rep.* iii. 28. 77—Discretion to allow such amendment to be left in the court where the demurrer is frivolous and vexatious, *ib.* 28—Propositions that where there are several issues in law and in fact, the former should be disposed of first, *ib.* 28. 77—That a party shall be at liberty after trial of an issue in fact to move in arrest of judgment, or for judgment, non obstante veredicto, or to move to set aside the judgment, such motion being allowed only on terms of paying costs of trial, *ib.* 28—That no error should be assigned except upon judgment of the court below, actually pronounced, *ib.*—Regulation proposed for preventing sham demurrers; form of certificate to be signed by counsel, *ib.* 30—Proposed regulation that a party shall in no case be at liberty without leave of the court to waive a special demurrer, *ib.* 30. 78.

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3. *Answers to Questions circulated by the Commissioners on the subject of Demurrers :*

Questions circulated by the commissioners as to whether it would be desirable that after trial of an issue in fact, any motion in arrest of judgment, or for judgment, non obstante veredicto should be allowed, except upon terms of paying all costs, including those of trial incurred since the pleading to which exception is taken, *Rep. iii. App. 10*—Answers thereto by serjeants and barristers-at-law, special pleaders, and others, *ib. 13-73. 211*—Also question whether it is desirable to provide that upon demurrer, the court, upon there appearing reasonable ground for demurring, and even after argument, should allow the party to amend as of course by pleading over to the merits, upon affidavit of merits and payment of costs of demurrer, *ib. 10*—Answers thereto by serjeants and barristers-at-law, special pleaders, and others, *ib. 13-73. 211*.

*Denton, John.* Barrister-at-law; answers by him to questions circulated by the commissioners on various matters of pleading and practice, *Rep. iii. App. 40-42*.

*Desborough, Mr.* See *Spence & Desborough, Messrs.*

*Detainers.* Suggestions that where plaintiff appoints a special bailiff, writs in the sheriff's office should not operate as detainers, *Rep. iii. App. Crowther 253*—Suggestions as to writs or detainers being lodged in the office 24 hours, *ib.*

*Detinue.* The present form of action as to detinue proposed to be retained, *Rep. iii. 7. 71*—Suggestions for abolishing detinue, *Rep. iii. App. Serjeant Lawes 235*.

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*Discovery.* See *Examination of Parties.*

*Distringas.* Suggestions with regard to the issue of distringas, *Rep. iii. App. Crowther 250*.

*Distress Damage Feasant.* Evils of the present state of the law regarding, *Rep. iii. App. Clark & Son 261*.

*Documentary Evidence.* The expenses attending the proving documentary evidence enhance the expenses of a lawsuit *Rep. iii. App. Anderton 216*—Suggestions for facilitating the proof of documents, *ib. 223*—Suggestion as to whether the mode suggested in the second report for dispensing with documentary evidence might not be made less expensive, more simple, and without so many oaths, *Eden 263*.

*Dower.* The present form of action as to dower proposed to be retained, *Rep. iii. 7. 71*—Suggestions for reforming the proceedings in dower and partition, *Rep. iii. App. Serjeant Lawes 233*.

*Duncan, Mr.* Communication from Mr. Duncan to the commissioners inserted in the first report alluded to, *Rep. iii. 40*.

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*East, Sir E. H., Bart., M. P.,* Late Chief Justice of Bengal. Answers to questions circulated by the commissioners on various matters of pleading and practice, *Rep. iii. App. 53-61*.

*Eddison, Mr.* See *Payne & Eddison, Messrs.*

*Eddowes, Mr.* See *Wyse & Eddowes, Messrs.*

*Eden, John, Attorney, Liverpool.* Answers to queries relative to various matters of practice, *Rep. iii. App. 130-132*—Communication from, stating objections to some of the alterations recommended in the second report of the commissioners, *ib. 262*.

*Ejectment.* The present form of action as to ejectment, under its new denomination of plea of lands, proposed to be retained, *Rep. iii. 7. 71*—Statement made by the commissioners that the improvements proposed to be introduced in ejectment, under its new form and denomination of a plea of land, will be found in the second report, *ib. 61*—Suggestions for altering the present practice in ejectment, *Rep. iii. App. Anderton 224*—Suggestions for abolishing ejectment; its evils, *Serjeant Lawes 232*.

*Election of Action.* Suggestion for abolishing the doctrine of election of action, *Rep. iii. App. Serjeant Lawes 236*—There is no necessity for retaining it, *ib. 237*.

*Ellison, Peregrine George.* Communication from P. G. Ellison, under-sheriff of Northumberland, on the hardship sheriffs have to encounter on writs of fi. fa. when landlords' claims are large, *Rep. iii. App. 264*.

*Entering the Issue.* If the entry on the record or judgment roll be the first entry of proceedings on record, as recommended in the second report, there will be no necessity for entering the issue, or rule to enter the issue, *Rep. iii. 50*.

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*Entry of Causes for Trial.* There is no sound objection to the present practice, so far as it respects town causes, *Rep.* iii. 66—Evils in country causes of entries for trial being made on the day trials are commenced; remedy suggested, *ib.* 66, 67. 88.

*Entry, Right of.* Suggestions for altering the law with regard to the right of entry for recovery of real property, *Rep.* iii. *App. Roscoe* 241.

*Equalization of Business.* Suggestions for equalizing the business of the three courts, *Rep.* iii. *App. M'Dougall* 245.

*Equity Courts.* See *Courts of Equity.*

*Error, Writs of.* Great room for improvement in the law and practice relative to writs of error, *Rep.* iii. 31, 32—By the present practice a writ of error lies for correcting any error in law, in the judgment or proceedings, provided the error be not aided by the effect of the pleading, or of the verdict, or by the several statutes of jeofails and amendment, *ib.* 31—Great number of the statutes of amendment and jeofails; apparent security afforded to the suitor by their cumulative effect; they do not embrace every possible case of formal objection, *ib.*—The passing of an Act for their consolidation recommended, *ib.*—The Act should be worded so as to prevent reversal, or arrest of judgment, in respect of any objection unconnected with the merits of the cause, *ib.*—Errors in the mode of entry should in no case be considered as connected with the merits, so as to be ground for reversing or arresting the judgment, *ib.*—The want of an original writ, bill, or warrant of attorney should not be allowed to amount to error on the record, *ib.*

A writ of error lies in respect of certain objections, in point of fact tending to affect the validity of the proceedings in a suit, *Rep.* iii. 31, 32—Peculiar nature of the writs in such cases; course of proceeding by which followed up; it is a cumbrous and prolix system, *ib.* 32—Appellate jurisdiction of the Court of King's Bench; other courts in Westminster Hall have no such jurisdiction, *ib.*—Present course of proceeding on error from the King's Bench into the Exchequer Chamber; defects of each step adverted to, *ib.* 33, 34—The recognizance of the bail in error must be taken before a judge; this arises from a defect in the wording of the statute 4 W. & M., c. 4; great hardship of this practice, *ib.* 33.

Recommendation that a writ of error upon matter of fact be no longer allowed, *Rep.* iii. 32. 78—And that all objections, in point of fact, on which writs of error have hitherto been founded should be determined in a summary way, *ib.*—Proposal that a writ of error from inferior courts should lie equally, either into King's Bench, Common Pleas, or Exchequer, in the first instance at the option of the plaintiff in error, and thence into the House of Lords, *ib.*

Improvements suggested in the practice in error, &c. in the Exchequer Chamber, and generally, *Rep.* iii. 34—Recommendation that the writ of error be sealed by any cursitor of the Court of Chancery on payment of 1 s. *ib.* 34. 78—That the writ bear teste of its true date, and be made returnable as soon as the record can be certified, *ib.*—That the present form of the writ be shortened and altered as suggested, *ib.*—That the writ of error shall be filed with the clerk of the errors of the court in which judgment was given upon payment of 1 s. *ib.* 35. 79.

Regulations proposed, that no allowance of the writ of error be necessary, *Rep.* iii. 35. 79—Notice of writ of error to be served on the opposite party; such notice being a superseas of execution, *ib.*—Certificate of counsel to be required, in order to stay execution; proposed form of certificate, *ib.*—That bail be put in within four days, if within ten miles of London, or in other cases within six days, and a bail bond executed in lieu of a recognizance, *ib.*—Such bail bond being allowed to be taken before a commissioner, *ib.*—That the bond be taken conditioned for payment of the amount recovered in the court below, with interest and costs of delay of execution by reason of the writ of error, *ib.*—Proposition that an affidavit of sufficiency shall be filed, and defendant in error shall have only ten days to except, *ib.*—That no rule to certify the record be necessary; other provision suggested, *ib.*

Regulations proposed by the commissioners that no rule to allege diminution or rule to assign errors be required; form of practice laid down, *Rep.* iii. 35. 79, 80—That no signature of counsel be required to the assignment of errors, or to any pleadings thereon, the same being delivered to the attorney of the opposite party, *ib.* 36. 80—That no entry on record be required before final judgment, *ib.*—That upon affirmance or non pros. of interest in addition to the costs be allowed and taxed by proper officer, *ib.*—Rule proposed, that no writ of error shall lie for denial of oyer, *ib.* 48—Regulation proposed, that no error in law shall be assigned, except upon a judgment of the court actually given, either upon demurrer, or special verdict, or motion to arrest the judgment, or to set the judgment aside, or for judgment non obstante veredicto; this regulation not to extend to the case of error or bills of exception, *ib.* 78.

Question circulated by the commissioners as to whether it is desirable that a writ of error should lie upon a matter of fact, or whether it would be more proper to dispose of such objections on motion, *Rep.* iii. *App.* 10—Answers thereto by serjeants, barristers-at-law, special pleaders, and others, *ib.* 13 *et seq.* 211.—Query, whether any improvement can



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be proposed in the present practice of error, *ib.* 10—Answers thereto by serjeants and barristers-at-law, special pleaders and others, *Rep.* iii. *App.* 13 *et seq.* 211—Also question, whether it would be right, notwithstanding a writ of error brought, to allow the party obtaining the judgment to issue execution forthwith, upon giving security for restitution; or whether the present practice is preferable, *ib.* 10—Answers thereto by serjeants and barristers-at-law, special pleaders and others, *ib.* 13 *et seq.* 211—Query issued by the commissioners, whether any improvement can be proposed in the present practice of error, *ib.* 81—Answers thereto by attornies, solicitors and others, *ib.* 83 *et seq.*

*Escape.* The sheriff should not be liable when the escape arises from riot or civil commotion, *Rep.* iii. *App.* *Crowther* 151.

*Evidence.* Question circulated by the commissioners, whether it would be expedient to admit ancient maps, plans, charts, or histories, as evidence of facts; also requiring other suggestions for the improvement of the existing law of evidence, *Rep.* iii. *App.* 11—Answers thereto by serjeants and barristers-at-law, special pleaders and others, *ib.* 15 *et seq.*

*Examination of Parties.* The examination of parties in the way of discovery, as recommended in the second report, is objectionable in principle, and likely to be found so in practice, *Rep.* iii. *App.* *J. Eden* 262.

*Exceptions.* See *Bills of Exceptions.*

*Exchequer Court.* This court should be made an open court, *Rep.* iii. *App.* *Anderton* 221.

*Execution, Law of (America).* Questions addressed by the commissioners to Mr. Richard Biddle, whether in all or any of the American States an execution does in any and in what cases take effect upon property of the following descriptions, or any of them: property in the public funds; shares in books of public companies; annuities; debts and choses in action; money; securities for money; and the whole real estate, whether legal or equitable, of the party against whom the execution issues, *Rep.* iii. *App.* 214—With answer thereto *ib.*—Also whether, supposing property of any of these descriptions to be liable to execution, such liability is open to any and what exceptions or limitations, and to what extent and in what cases such property is liable to sale under the execution, *ib.* 214—With answer thereto, *ib.* 215—And also, with respect to each description of property, what is the mode of proceeding in execution? Whether any inquisition, or proceeding in the nature of an inquisition, is held to discover or ascertain the nature and amount of the property? If not, how is it in each case ascertained, and a good title made to a purchaser? How does he obtain the title-deeds of land? With respect to each description of property, how is the transfer or assignment to the purchaser effected? And, with respect to debts and choses in action, does the assignment entitle him to sue in his own name, or in that of the party against whom the execution issues? *ib.*—Answers, *ib.* 215.

Query as to whether any and what inconvenience is found to attach to the state of the law on this subject, in America, or to the modes of proceeding in execution with respect to the abovementioned descriptions of property, or any of them, *Rep.* iii. *App.* 214—Answer, *ib.* 215—Further question addressed to the same party, whether in the States where such law of execution prevails, the person of the debtor is also subject, at the election of the creditor, to execution, and whether such execution against the property can be had after the person has been taken in execution, or vice versâ, *ib.* 214—Answer thereto, *ib.* 215.

*Execution, Writ of.* Regulation proposed, that upon judgment obtained in any action, a writ of execution may issue in the first instance into any county, though different from that in which the action is laid, *Rep.* iii. 73.

Question circulated by the commissioners, whether a writ of execution should take effect on stock in the public funds, or shares transferable in the books of public companies; or on money or securities for money, annuities, debts due; or whether the whole real estate, copyhold as well as freehold, and equitable as well as legal, should be liable to sale, or otherwise affected; also as to what difficulties occur, particularly as regards stock in the public funds; what course of proceeding should be recommended for ascertaining the property of a party in execution, or levying the debt and costs in each of the above-mentioned cases? *Rep.* iii. *App.* 11. 81—Answers thereto by barristers, attornies, solicitors, and others, *ib.* 15 *et seq.* 52. 84 *et seq.*

Query as to what improvements can be suggested in the law of execution, the mode of levying under the same, or the poundage, fees, or other expenses attendant thereon, *ib.* 12. 82—Answers thereto, *ib.* 15–78. 84 *et seq.*

*Executors and Administrators.* An executor or administrator is not liable in the King's Bench or Common Pleas (though liable in the Exchequer) to be sued in action of debt or simple contract, *Rep.* iii. 17—This rule is connected with that ancient branch of jurisdiction relating to wager of law, *ib.*—Inapplicability of the mode of trial *wager of law* to the case of a defendant sued as executor or administrator; both the mode of trial and the rule depending upon it are highly objectionable, *ib.* 18—Recommendation of the commissioners that the wager of law should be abolished and an action of debt on simple contract

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contract should be maintainable against an executor, *Rep.* iii. 18. 84—Reasons why executors and administrators are not at the present time liable to costs; proposition that such plaintiffs failing in their action should be liable to costs to be levied out of the goods of the deceased, *ib.* 61.

Regulations proposed, that an action of trespass or trespass on the case shall be maintainable by executors or administrators to recover damages for trespasses or injuries committed in respect of lands, &c. of the deceased as he might have recovered in his lifetime, *Rep.* iii. 74.—That in actions against executors and administrators no judgment obtained upon confession shall be pleaded unless the same shall have been recovered before action brought, *ib.* 86—Regulation proposed, that where the plaintiff declares as executor or administrator and fails in the action, the defendant shall be entitled to costs to be levied out of the goods of the deceased, *ib.*—That upon judgments against executors and administrators, when the jury find assets the judgment shall direct the amount to be levied of the goods of the deceased, if the executor have so much in his hands, and if not, then of his own goods, *ib.* 87.

See also *Judgment*, 3. *Pleading*, V.

## F.

*Faber*, Mr. See *Wilson & Faber*, Messrs.

*Falcon*, Robert. Attorney; answers to questions circulated by the commissioners on various matters of practice, *Rep.* iii. *App.* 111–116.

*Fees*. Queries circulated by the commissioners with a view to obtaining suggestions with respect to the regulation of the fees to be payable after certain reforms contemplated in various offices; and with regard to the emoluments of the succeeding officers, whether they should be paid by fees or salary, *Rep.* iii. *App.* 1—Answers thereto, *ib.* 2. 4. 6, 7.—Suggestions relative to the scale of bail fees, *Rep.* iii. *App.* *Crowther* 253—Amount of fees proposed to be taken by sheriffs' officers on arrests, *Sir R. Phillips* 250.  
See also *Counsel*. *Court Fees*. *Office Fees*. *Remanet Fees*.

*Females*. Females should not be arrested or taken in execution, *Rep.* iii. *App.* *Crowther* 151—In Pennsylvania, by an Act passed in 1818 females are exempt from arrest as to debts contracted after that date, *Rep.* iii. *App.* 215.

*Filing Affidavits*. Affidavits should not be filed at judges' chambers, but with the same officer as if sworn in court, *Rep.* iii. *App.* *Anderton* 223.

*Filing Bills*. This proceeding in the Court of King's Bench should be abolished; it is charged for, but seldom done, *Rep.* iii. *App.* *Anderton* 222.

*Final Judgment*. The judgment is final in actions of debt, where a specific sum is demanded, in which case such course of proceeding is correct; but in other instances is objectionable, from there being no check to judgment and execution for more than is really due, *Rep.* iii. 63—Suggestions for a summons to show cause why final judgment should not be signed directly after declaration, unless upon affidavit of defence on merits, *Rep.* iii. *App.* *Clayton* 159—Suggestions on notice to bail for final judgment, *Crowther* 252.

*Fisher*, Mr. Communication from Mr. Fisher to the commissioners, inserted in the First Report, p. 616, with respect to affidavits taken before commissioners in town, alluded to, *Rep.* iii. 40—Also communication from Mr. Fisher in First Report, p. 615, as to nisi prius records, adverted to, *ib.* 51—Answers to questions circulated by the commissioners on various matters of practice, *Rep.* iii. *App.* 205–208.

*Form of Action*. An opinion is entertained by some persons that all distinctions as to form of action should be abolished; opinion of the commissioners that no change in the present form is expedient, *Rep.* iii. 6—The retention of the present forms is to be preferred to devising new ones, *ib.*—Forms fallen into disuse, and thus proved by experience to be redundant, should be abolished, *ib.* 6, 7—Absence of any authoritative enumeration of actions in the law of England at present, *ib.* 7—Variety of writs contained in the register, *ib.*—By the abolition of forms already recommended, the greater part of the forms contained in this repository would be swept away, *ib.*—Specific forms of action proposed to be discontinued, *ib.*—Indistinctness of the lines of demarcation between the bounds of each different form of suit; its effects in some cases to frustrate the plaintiff's proceedings, *ib.*—A mistake of one form of action for another is not a source of failure on the trial only; it may also present ground for general demurrer, motion in arrest of judgment, or writ of error, *ib.* 8—Classification of rules relating to the institution of the legal remedy, *ib.* 8, 9.

Regulation proposed, that all actions between subject and subject shall be discontinued, except in certain cases; these cases enumerated, *Rep.* iii. 71—Regulation proposed, that the misjoinder of different forms of action shall be ground for special demurrer only, *ib.* 72.

*Form of Action*—continued.

Question circulated by the commissioners, as to whether it would be desirable to retain only the following actions: case (including assumpsit), covenant, debt, detinue, mandamus, prohibition, replevin, and trespass; whether any and what objection occurs to such restriction, *Rep. iii. App. 9*—Answers thereto by serjeants and barristers-at-law, special pleaders and others, *ib. 12 et seq. 210*.

*Foreign Attachment.* Regulation proposed, that the plea of foreign attachment and pleas justifying under judicial process, be pleaded in a more summary form, to be settled by a rule of court, *Rep. iii. 87*.

*Fraud (America).* In Pennsylvania, fraud by concealment of estate prevents an insolvent's discharge from prison, *Rep. iii. App. 215*.

*Freshfield, Mr.* Mr. Freshfield's communication adverted to by the commissioners, *Rep. iii. 41*—Communication from Mr. J. W. Freshfield, M.P., in answer to certain questions from the commissioners, on the practice and proceedings of the courts of law, *Rep. iii. App. 260*.

*Frost, Charles.* Attorney at Hull; answers to questions circulated by the commissioners on various matters of practice, *Rep. iii. App. 180-182*.

## G.

*Gaols.* See *Lock-up Houses and Gaols*.

*Gardner, John.* Attorney at Garstang; answers to queries issued by the commissioners, on various matters of practice and proceedings in the courts of law, *Rep. iii. App. 266*.

*Gibbon, John.* Attorney, Ashton-under-Lyne; answers to questions on various matters of practice, *Rep. iii. App. 156-159*.

*Goodrich, Mr.* The answers of Mr. Goodrich to certain queries on the practice of the courts of law as regards costs, and communications from him on the subject adverted to, *Rep. iii. 41*—Answers to questions circulated by the commissioners on the subject of costs, *Rep. iii. App. 4-6*.

*Gregory, G. P. F.* Attorney; observations on questions of practice circulated by the commissioners, and against an inferior class of attornies being let in under the alterations proposed, *Rep. iii. App. 198*.

## H.

*Hampson, Sir G. F. Bart.* Barrister-at-law; answers to the questions of the commissioners on various matters of pleading and practice, *Rep. iii. App. 16, 17*.

*Harrison, Mr.* See *Wilson & Harrison, Messrs.*

*Harvey, Thomas.* Attorney at Liverpool; answers to questions circulated by the commissioners on various matters of practice, *Rep. iii. App. 177-179*.

*Henderson, Robert.* Attorney; answers to certain queries on various matters of practice and pleading, *Rep. iii. App. 151-153*.

*Hodgson, Peter.* Attorney, Whitehaven; answers to questions circulated by the commissioners relative to various matters of practice, *Rep. iii. App. 137-139*.

*Holidays.* The holidays at the common law offices should be regulated by those at the stamp office, *Rep. iii. App. Anderton 223*.

*Holroyd, Edward.* Barrister-at-law; answers to questions circulated by the commissioners on various points of pleading and practice, *Rep. iii. App. 64-67*.

*Hours of Arrest.* They should be limited to the day time, *Rep. iii. App. Crowther 151*.

*Howards & Harrison, Messrs.* Attornies, Preston; answers to questions circulated by the commissioners relative to various matters of practice, *Rep. iii. App. 89-92*.

*Hudson, Thomas, George Watlington, and H. B. Ray.* Prothonotaries of the Common Pleas; answers to queries on the subject of costs, *Rep. iii. App. 6, 7*.

*Hunt & Son, Messrs.* Attornies Stourbridge; answers to questions circulated by the commissioners relative to various matters of practice, *Rep. iii. App. 139*.

*Hurd, P.* Attorney; answers to certain queries issued by the commissioners as to the practice and proceedings of the courts of law, *Rep. iii. App. 94-96*.

## I.

*Imprisonment for Debt* (America). By the constitution of Pennsylvania it is provided that the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, *Rep.* iii. *App.* 215—In Pennsylvania, the confinement is actual within the walls of the prison, *ib.*

*Inquiry, Writ of.* Where the action sounds in damages, and the defendant suffers judgment by default, or there is judgment against him on demurrer or noli tenere record, such judgment is interlocutory, and a writ of inquiry is executed to ascertain the amount of damages for which final judgment may be signed, *Rep.* iii. 63—The statute 8 & 9 Will. 3, c. 11, has provided that upon bonds conditioned for the performance of covenants or agreements, the writ of inquiry shall be executed before a judge of assize or nisi prius; this method is applied to many cases where any inquiry before a sheriff would be more appropriate, to some where a reference to the Master would suffice, and to few where it is worth while to conduct the inquiry before a judge, *ib.* 64—Recommendation, that in all cases to which the Act of Will. 3, c. 11, applies, the writ of inquiry be always executed before the sheriff, unless the court or a judge should, upon special application, order an inquiry before a judge, or a reference to the Master or prothonotaries, *ib.* 64. 88—Proposed mode of executing a writ of inquiry out of London and Middlesex, *Rep.* iii. *App.* Collett 254.

*Insolvent Acts.* Great evils arising from these Acts, *Rep.* iii. *App.* Collett 254; *Corley* 255.

*Insolvent Debtors* (America). Mode of proceeding to obtain their discharge in Pennsylvania, *Rep.* iii. *App.* 215.

*Insolvents.* See *Bankrupts and Insolvents.*

*Interest.* Questions as to whether interest should be recoverable upon every debt or demand for a sum certain, to be calculated from the time of demand, or other fixed time of payment, *Rep.* iii. *App.* 12. 82—Answers thereto by serjeants and barristers-at-law, attornies, solicitors, and others, *ib.* 15-79. 84 *et seq.*

*Interlocutory Judgment.* Improvements suggested in the practice of interlocutory judgment and subsequent proceedings, *Rep.* iii. 63, 64.

*Issue and Trial.* Regulation proposed, that where the plaintiff shall neglect to make up and deliver the issue the defendant may serve with a four days' notice, and on failure sign judgment; also regulation as to proceeding to trial after notice, *Rep.* iii. 84.

*Issues.* See *Delivery of Issue.* *Entering the Issue.* *Issue and Trial.*

## J.

*James, E. L.* Attorney, Presteigne; answers to questions circulated by the commissioners relative to various matters of practice, *Rep.* iii. *App.* 83.

*Jeans, Thomas.* Communication from, to the Secretary of State for the Home Department, relative to the inconveniences suffered by special jurymen, *Rep.* iii. *App.* 257—Further communication to S. M. Phillipps, one of the Under Secretaries of State for the Home Department, on the same subject, *ib.* 258-260.

*Jeofails and Amendments, Statutes of.* Regulation proposed, that these statutes shall be amended and consolidated by a new Act; mode in which this Act should be framed, *Rep.* iii. 78—Question, circulated by the commissioners, whether trivial objections of form are sufficiently guarded against by the present statutes of Jeofails and Amendments, *Rep.* iii. *App.* 10—Answers thereto, *ib.* 13-74. 211.

*Jervis, T.* Answers to questions on various matters of pleading and practice, *Rep.* iii. *App.* 39, 40—Communication containing suggestions for stamping agreements and deeds to be given in evidence, *ib.* 244.

*Jewison, C.* Communication from C. Jewison, chief bailiff of Pontefract, Yorkshire, showing the evils sheriffs suffer by the operation of the bankrupt laws on levies, *Rep.* iii. *App.* 264.

*Jones, Richard.* Attorney; answers to questions circulated by the commissioners on various matters of practice, *Rep.* iii. *App.* 203.

*Jones & Ward, Messrs.* Attornies; answers to queries on various matters of practice and pleadings, *Rep.* iii. *App.* 159-161.

*Johnson, G.* Attorney; answers to questions circulated by the commissioners on various matters of practice, *Rep.* iii. *App.* 117-119.

*Judges' Chambers.* They are totally unfit for business as well as occupancy, *Rep.* iii. *App.* Anderton 223.

*Judges' Clerks.* Chief clerks of judges should be allowed to swear affidavits at chambers, *Rep. iii. App. Anderton 223.*

*Judges' Orders.* Regulation proposed, that judges' orders shall for all purposes have full force without being made rules of court, but without prejudice to any right of applying to the court to set aside or vary such order, *Rep. iii. 81.*

#### JUDGMENT:

1. *Arrest of Judgment.*
2. *Judgment in Debt.*
3. *Against Executors and Administrators.*
4. *On Motions.*
5. *Of Non Pros.*
6. *In Case of a Nonsuit.*
7. *For want of Plea.*
8. *For want of Rejoinder.*

##### 1. *Arrest of Judgment:*

Regulation proposed, that a party shall be at liberty, as at present, after trial of issue in fact, to move in arrest of judgment or for judgment non obstante veredicto, or to set aside judgment; provision as to costs, *Rep. iii. 77, 78.*

##### 2. *Judgment in Debt:*

Proposition, that in debt, except on bond, judgment, recognizance, or warrant of attorney, no final judgment by default on demurrer, or non vel record, be signed until interlocutory judgment be first signed, and the amount to be recovered be duly assessed or computed thereon as in other actions, *Rep. iii. 64. 87*—Question circulated by the commissioners, whether in any action of debt, final judgment by default should be signed without interlocutory judgment; whether interlocutory judgment should be signed, and a writ of inquiry executed, or principal and interest computed in all cases of judgment by default; and also whether the practice of computing could be extended to other actions, *Rep. iii. App. 11. 81*—Answers thereto, *ib. 14 et seq. 83 et seq.*

##### 3. *Against Executors and Administrators:*

Proposition, that where a judgment is obtained against an executor or administrator upon any plea except that of plene administravit, or upon that plea when the jury find he has assets, the judgment should direct the amount to be levied of the goods of the deceased, if the executor have so much in his hands; and if not, then of his own goods, as he might have pleaded want of assets, *Rep. iii. 62.*

##### 4. *On Motions:*

Evils of the delay in obtaining judgment on motions, *Rep. iii. App. Anderton 216.*

##### 5. *Of Non Pros:*

Regulation proposed, that no judgment of non pros. for want of replication, &c. be signed until four days after demand, *Rep. iii. 44.*

##### 6. *In Case of a Nonsuit:*

Regulation proposed, that the application for judgment, as in case of nonsuit, shall be made before a single judge only, *Rep. iii. 50. 84.*

##### 7. *For want of Plea:*

Regulation proposed, that no judgment shall be signed for want of plea until four days after demand of plea; time to be allowed where the plaintiff has appeared for the defendant, *Rep. iii. 44. 82.*

##### 8. *For want of Rejoinder:*

Regulation proposed, that no judgment be signed on failure to rejoin, &c. until four days after demand of rejoinder, &c. but defendant not to be entitled to more time to rejoin after such demand than remains of the time for rejoining, and twenty-four hours afterwards, *Rep. iii. 44.*—See also *Final Judgment. Interlocutory Judgment.*

*Judgment Roll.* Query as to whether the rules providing that the judgment roll be carried in within a certain time, should be abolished or not, *Rep. iii. App. 11. 81*—Answers thereto, *ib. 15-78. 84 et seq.*

*Juries.* See *Special Juries. Trial by Jury.*

*Jury*

**Jury Process.** Names and objects of the jury processes; ancient and modern practice as to their issue; difficulty of showing a reason for such writs in each cause; they are virtually repealed by statute; great expense of the unnecessary practice of re-sealing these writs for every sitting, *Rep.* iii. 64, 65—Proposition of the commissioners, that no writ of venire facias, distringas, or habeas corpora juratorum, shall henceforth be issued in any cause to be tried by a common jury, *ib.* 65—And that a precept be issued by the judge of assize or nisi prius, to the sheriff, for summoning a sufficient number of jurors for the trial of all common law issues at the assizes or sittings, *ib.*—Proposition, that no essoign be permitted in consequence of proposed alterations in the mode of summoning common juries, *ib.*—The forms of entry in the record as to the jury process will require alteration correspondent with the proposed amendments, *ib.*—The writs in individual causes might conveniently be superseded in favour of a general precept to the sheriff, applicable to all issues to be tried by special jury at the particular assize or sittings, *ib.*—Regulation proposed, that no jury process shall be issued in any cause to be tried by a special jury, or by a common jury, at any assize or sittings at nisi prius, but that in lieu thereof a precept shall be issued to the sheriff by the judge of assize or nisi prius, *ib.* 88.

**Jurors and Witnesses.** Question of the commissioners, as to whether any considerable inconvenience arises from jurors and witnesses being kept waiting in court long before the cause on which they attend comes on to be heard; or from common juries and witnesses being detained till the special juries in the day's list are disposed of; and as to the manner in which such inconvenience may be prevented, *Rep.* iii. *App.* 11. 81—Answers thereto by serjeants and barristers-at-law, special pleaders, and others, *ib.* 14 *et seq.* 84 *et seq.*

**Justification of Bail.** Alterations in the present practice with respect to the justification of bail suggested, *Rep.* iii. *App.* *Crowther* 151. 252.

## L.

**Landlords.** To what extent only they should be allowed priority of payment, *Rep.* iii. *App.* *Crowther* 151.

**Lawes, Mr. Serjeant Edward.** Answers to queries circulated by the commissioners on various matters of pleading and practice, *Rep.* iii. *App.* 22-30—Extract from a manuscript referred to in the communication of Mr. Serjeant E. Lawes, *ib.* 230.

**Law of Actions.** See *Actions, Law of.* *Form of Actions.*

**Law of Arrest.** See *Arrest, Law of.*

**Le Blanc, Master.** Communication from, in the Appendix to the First Report referred to, on the subject of computation of days for pleading, &c., *Rep.* iii. 41. 44—Also reference to his communication, First Report, p. 531, as to nisi prius records, *ib.* 51—Answers to questions circulated by the commissioners on the subject of costs, *Rep.* iii. *App.* 2-4—Extract of a letter from Master Le Blanc relative to an amended method of conducting chamber business, *ib.* 261.

**Legacies.** Under the present law an action is maintainable against an executor for a specific chattel bequeathed to the plaintiff, after the assent of the executor to the bequest, but not otherwise, *Rep.* iii. 20—No action can be brought for a pecuniary legacy, payable out of the general assets, unless the executor having assets has expressly promised to pay, *ib.*—Insurmountable difficulties opposing themselves to the introduction of a common law remedy in this particular, *ib.* 21—Considerations rendering it inexpedient to permit an action at law for a legacy, or to set aside the jurisdiction of the Court of Equity in claims of legacy, *ib.* 21, 22—It is not expedient to permit actions at law for small legacies; a remedy for the inconvenience now experienced might be found in improvements in the courts of equity, *ib.*—Query as to how far it is desirable that legacies generally, or under 200*l.*, should be recoverable from the executor or administrator, with the will annexed, independently of his assent, by action at law, after the expiration of one year from the testator's death, *Rep.* iii. *App.* 9—Answers thereto, *ib.* 13-72. 211.

**Limitation of Time.** Defective state of the law in regard to the limitation of time, *Rep.* iii. 15—Actions on simple contract are subjected by statute to an express limitation of six years, *ib.*—No limitation exists with regard to bonds and other deeds, judgments, and other matters of record, *ib.*—Period at which the presumption of payment in the case of bonds or judgments has been usually fixed, *ib.*—The establishment by statute of a positive bar recommended, *ib.* 16—A lapse of twenty years should be a positive bar in actions on specialties or records; specific improvements proposed, *ib.*—Concurrence in the suggestion of the Real Property Commissioners with respect to the limitation in dower, quare impedit, and actions and distresses for rent, *ib.*

Regulation proposed, that all actions of debt, covenant, or scire facias, grounded on a specialty or matter of record, shall be commenced within twenty years next after the cause of action accrued, subject to certain provisos, *Rep.* iii. 73—Proviso, that if judg-

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ment be given for the plaintiff, and reversed by writ of error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, judgment be given against him, the plaintiff, his executors or administrators, may commence a new action within a year after such judgment reversed or given against the plaintiff, *Rep. iii. 73*—Proviso, that if any person entitled to any of the said actions shall be at the time the cause of action accrued, within the age of twenty-one years, feme-covert, non compos mentis, or beyond the seas, then such actions may be brought within twenty years after the removal of such disability, *ib.*—Proviso, that if within twenty years next after the cause of action accrued, any payment shall be made in respect of principal or interest by any person against whom there shall be such cause of action, or any acknowledgment in writing shall be signed by such person or his lawful agent, to the effect that the sum in dispute, or any part thereof, is then due, then action may be brought for sum remaining unpaid against the person making the payment or acknowledgment, as heirs, executors, or administrators, within twenty years next after such payment or acknowledgment made, *ib. 73, 74*.

Question issued by the commissioners, whether it is desirable that in actions on a specialty, or on a record, a plea should be allowed that the cause of action did not accrue within 20 years; allowing a replication of an acknowledgment in writing within that time, that the sum or part thereof remained unpaid, or that interest or part principal had been paid within same time, *Rep. iii. App. 9*—Answers thereto by serjeants and barristers-at-law, special pleaders, and others, *ib. 12 et seq. 210*.

*Lloyd, John.* Prothonotary, Chester; answers to queries circulated by the commissioners on various matters of practice, *Rep. iii. App. 188*.

*Local and Transitory Actions.* Regulation proposed, that all actions for recovery of the realty, and all actions for injury to real property (whether in trespass or trespass on the case), and also the action of replevin, shall be local; and all other actions transitory, *Rep. iii. 73*.

*Local Jurisdictions.* Number of local jurisdictions possessing the power of holding to bail, *Rep. iii. App. Anderton 221*.

*Lock-up Houses and Gaols.* Should be visited by sheriffs at least once a year, *Rep. iii. App. Sir R. Phillips 250*.—See also *Sheriffs' Officers*.

*Long, George.* Barrister-at-law; answers to questions circulated by the commissioners on various matters of pleading and practice, *Rep. iii. App. 43-45*.

*Lord Mayor and Sheriffs' Courts.* The superior courts would be greatly relieved if these courts were thrown open, *Rep. iii. App. Anderton 221*.

*Lott, Thomas.* Attorney; answers to queries issued by the commissioners on various points of practice, *Rep. iii. App. 144-149*.

*Lumley, W. G.* Barrister-at-law; answers to certain queries on various matters of pleadings and practice, *Rep. iii. App. 45-50*.

*Lunatics.* Suggestion with regard to the arrest and removal of lunatics, *Rep. iii. App. Sir R. Phillips 250*.

## M.

*M'Dougall, Alexander.* Attorney; answers to questions circulated by the commissioners on various points of practice, *Rep. iii. App. 140-142*—Communication from A. M'Dougall, containing suggestions for superseding chamber business, for equalizing the business of the courts; and making observations on the alteration of process, and as to the law of arrest, *ib. 245-248*.

*Mandamus.* The present form of action as to mandamus proposed to be retained, *Rep. iii. 7. 71*—Some alterations proposed in the second report, to be introduced into mandamus, have since been carried into effect by the Legislature, *ib. 61*.

*Manning, John.* Barrister-at-law; answers to questions circulated by the commissioners on various points of pleading and practice, *Rep. iii. App. 67-79*.

*Marine Policies.* Alterations recommended to be made in the declaration to be used in actions on marine policies of insurance, as regards the names of persons interested, and the precise nature of the loss, *Rep. iii. 51, 52*.

*Meetings of Creditors.* Suggestions as to the arrest of persons who have called meetings of their creditors, or are attending such meetings, *Rep. iii. App. Sir R. Phillips 250*.

*Mellor, James.* Attorney, Ashton-under-Lyne; answers to certain queries on various matters of practice, *Rep. iii. App. 163*.

Minchin,

*Minchin, T. A.* Attorney, Gosport; answers to questions circulated by the commissioners relative to various matters of practice and pleading, *Rep.* iii. *App.* 85-89.

**MISJOINDER :**

1. *Of Forms of Action.*

2. *Of Rights of Action.*

1. *Of Forms of Action :*

The rules respecting the joinder of different forms of action are unsatisfactory; the want of consistency produces an unnecessary intricacy in the practical rules, *Rep.* iii. 13—Serious consequences of mistakes, *ib.*—It would be inexpedient to abolish these rules altogether, *ib.*—A misjoinder should be ground for special demurrer only, *ib.*

2. *Of Rights of Action :*

Misjoinder of rights of action involves considerations very different from those which relate to misjoinder of forms, *Rep.* iii. 13—It ought to continue to be a ground for general demurrer for motion in arrest of judgment and for writ of error, *ib.*—But an amendment should in all cases be allowed upon payment of costs, *ib.*

*Misnomer, Plea of.* See *Pleas*, 5.

*Motions of Course.* Motions of course, which require only counsel's hand, should be done away with, and a side-bar rule substituted, *Rep.* iii. *App.* *Anderton* 223.

N.

*New Trials.* Regulation proposed, that upon motions for new trials, the rule nisi shall express on what particular ground the trial is applied for; the party to be precluded from entering into any other matter without special permission expressed in the rule absolute, *Rep.* iii. 80.

Questions circulated by the commissioners, whether any and what alterations are still required relating to new trials; whether it is desirable that the ground of every motion for a new trial should be specified in the rule nisi; and whether, where a new trial is granted on a specific ground, the party moving shall be precluded from entering into any other part of the case, unless authorized by rule of court, *Rep.* iii. *App.* 11—Answers thereto by serjeants, barristers-at-law, and others, *ib.* 15 *et seq.*

*Nicol, Robert.* Attorney; answers to queries circulated by the commissioners on various matters of practice, *Rep.* iii. *App.* 185-188.

*Nisi Prius.* See *Sittings at Nisi Prius.*

*Nisi Prius Records.* It is desirable to abolish the proceeding of passing the nisi prius record, and with it the attendant fees of office; reasons assigned, *Rep.* iii. 50, 51.

*Non-joinder, Plea of.* Question issued by the commissioners, whether it is desirable upon a plea of non-joinder of a defendant to allow a replication of the bankruptcy or insolvency of the party not joined, *Rep.* iii. *App.* 10—Answers thereto, *ib.* 13 *et seq.* 211.

*Non Pros.* See *Judgment*, 5.

*Nonsuit.* See *Judgment*, 6.

O.

*Office Copies.* Great expense attending office copies of affidavits; the charge should be reduced to 6 *d.*, or even 4 *d.* per folio, *Rep.* iii. 41. 80, 81—The proposed reduction should apply to every description of proceedings, *ib.*

Question of the commissioners, whether parties are not now required to take office copies of affidavits, &c. where that expense might be conveniently saved; whether the charges are not larger than reasonable; improvements suggested thereon, *Rep.* iii. *App.* 1. 80—Answers thereto, *ib.* 2. 5, 6, 7.

*Office Fees.* The payment of office fees for entries which are never made enhance the expense of common law proceedings, *Rep.* iii. *App.* *Anderton* 216.

*Officers of the Courts.* Questions circulated by the commissioners among the officers of the courts on the subject of costs, *Rep.* iii. *App.* 1, 2—Answers thereto, *ib.* 2-8.

*Onslow, Mr. Serjeant.* Answers to questions circulated by the commissioners on various matters of pleading and practice, *Rep.* iii. *App.* 38, 39.

*Orders.* Are made by a single judge sitting at chambers; practice with regard to them, *Rep.* iii. 41, 42.—See also *Rules*.

*Original Writ.* This writ and the king's fine paid upon it should be done away with, *Rep.* iii. *App.* *Anderton* 222.



*Owen, E.* Attorney at Manchester; answers to queries on various matters of practice, *Rep.* iii. *App.* 197.

P.

*Palace Court.* Advantages that would arise from this court being thrown open, *Rep.* iii. *App.* *Anderton* 221.

*Palmer, Mr.* Communication from Mr. Palmer to the commissioners, inserted in the first report, adverted to, *Rep.* iii. 40—Answers to questions circulated by the commissioners on various matters of practice, *Rep.* iii. *App.* 189–191.

*Paper Books.* Question as to whether it is desirable to abolish the making up the paper book in the King's Bench, and pleadings delivered instead of filed, and issues made up by attornies, *Rep.* iii. *App.* 81—Answers thereto by attornies, solicitors, and others, *ib.* 52. 83–268—The making up the paper books should be done away with, *Rep.* iii. *App.* *Anderton* 222.

*Parties to Suits.* The present rules relating to parties to suits are indispensable, the nicety of distinction they introduce is more than compensated by the benefit produced, *Rep.* iii. 9—Particular rules requiring alteration, *ib.*—In actions on contracts the joinder of a person, no party to the contract, as defendant with actual parties, is ground for nonsuit or verdict against the plaintiff, as also for writ of error or arrest of judgment, *ib.*—Proposal that the joinder of too many defendants should not be fatal, *ib.*—Provision as to costs, *ib.*—Check to plaintiffs joining as defendants persons whom they know not to be liable to action in order to exclude their testimony as witnesses, *ib.*

Regulation proposed by which the joint liability of defendants should be secured and proved, *Rep.* iii. 9, 10—Regulation by which the right of set-off would not be prejudicial, *ib.* 10—Rule in actions on contracts that if there are several joint contractors they shall be joined as defendants; omission of any one leading to the non-joinder being pleaded in abatement; great hardship attending this rule, *ib.*—The opinion of some persons that the plea of non-joinder should be disallowed altogether, not assented to by the commissioners, *ib.*—Footing on which the plea of non-joinder is proposed to be placed, *ib.* 10, 11—Probable effect of the proposed regulation, *ib.* 11.

In an action against joint defendants it is competent for any one of them to plead a matter operating in his personal discharge, such as that he is bankrupt or insolvent, &c., upon which the plaintiff, if unable to contest the truth of the plea, enters a nolle prosequi with respect to that defendant, *Rep.* iii. 11—Alteration of the law in this particular recommended, *ib.*—Operation of the rule as to the death of one of several joint-contractors, the right of action not lying against the executor or administrators of the deceased, *ib.*—It is not expedient to alter the existing law by which the surviving contractor alone is liable, *ib.* 11, 12—In actions ex delicto the omission of a person who ought to join as plaintiff enables the objection to be taken only by plea in abatement or by way of apportionment of the damages on trial, *ib.* 12—Too many persons being made co-plaintiffs is an absolute answer to the action, and an objection may be taken at any period of the suit, *ib.*—It is not expedient to alter the existing rule in the case where too many plaintiffs are joined in such actions, *ib.* 12, 13.

Regulations proposed in actions upon contract against several defendants, *Rep.* iii. 71, 72—That where in such actions the proof offered by the plaintiff fails to establish the liability of a particular defendant, the judge shall direct his immediate acquittal, that he may be called, if necessary, as a witness for the other side, *ib.* 72—That in such action, if any defendant chooses to admit his own liability, it shall be competent to him to offer proof supplementary to the plaintiffs, *ib.* 72—That in such actions, notwithstanding the acquittal of any defendant, a party sued with him, if obliged to satisfy the whole demand, shall be entitled to bring an action against him for contribution and to prove their joint liability, *ib.*—Proposition that the preceding regulations shall not prejudice any right to set off, *ib.*

Proposed regulation, that no plea of non-joinder of a joint contractor shall be received, unless the party offering such plea shall, before or at the time of pleading, procure an appearance to be entered for the party whose non-joinder he objects to, *Rep.* iii. 72—And that the plaintiff shall upon such plea be at liberty to amend his declaration, *ib.*—That to a plea of non-joinder of a joint contractor the plaintiff be allowed to reply, that the party whose omission is objected to has become bankrupt or has taken the benefit of the Insolvent Act, *ib.*

*Partners.* One partner cannot sue his co-partner in any action in form ex contractu, but must proceed by action of account or in equity, *Rep.* iii. 12—Case in which this doctrine is productive of inconvenience and requires regulation, *ib.*—All controversies between partners should be left to the exclusive jurisdiction of the equitable courts, *ib.*

*Passing Records.* Regulation proposed, that the passing of the nisi prius record shall be discontinued, *Rep.* iii. 84—Heavy fees charged on passing records; instances given, *Rep.* iii. *App.* *Anderton* 223.

*Patents.*

*Patents.* In actions for infringing patents, the declarations, after stating the plaintiff's right, the variety of counts alleging numerous modes of infringement might be easily consolidated into one count, *Rep.* iii. 59.

*Payne & Addison, Messrs.* Attornies, Leeds; answers to questions circulated by the commissioners on various matters of practice, *Rep.* iii. *App.* 164-167.

*Pemberton, John.* Barrister-at-law; answers to certain questions circulated by the commissioners on various matters of pleading and practice, *Rep.* iii. *App.* 30-32.

*Penal Statutes.* See *Declarations*, 4.

*Pender, Tressider & Rimell, Messrs.* Attornies, Falmouth; answers to questions circulated by the commissioners on various matters of practice, *Rep.* iii. *App.* 204.

*Pennsylvania.* Answers by Richard Biddle to queries on the law of execution in the state of Pennsylvania, *Rep.* iii. *App.* 214.—See also *America*.

*Person of Debtors (America).* In Pennsylvania the person of debtors may be taken in execution; real and personal property must be first exhausted, *Rep.* iii. *App.* 215.

*Personal Property.* Mode of giving possession under execution in Pennsylvania; no inquisition is held to ascertain the value; a levy not reasonably descriptive would be set aside by the court, and if not, would not convey a valid title to a purchaser, *Rep.* iii. *App.* 215.—See also *Pleading*, VIII. 4.

*Phillips, Sir Richard.* Communication from Sir Richard Phillips, containing suggestions as to arrest on mesne process, *Rep.* iii. *App.* 249.

*Plaintiffs in Person.* Evils arising from allowing plaintiffs to sue in person, *Rep.* iii. *App.* *Anderton* 216-218; *Collett* 254.

*Platt, Samuel,* Clerk of the Papers, King's Bench. Answers to certain questions circulated by the commissioners on various matters of pleading and practice, *Rep.* iii. *App.* 16.

#### PLEADING:

##### I. Generally.

##### II. Pleading in Bar.

##### III. In Covenant.

##### IV. In Detinue.

##### V. With respect to Executors and Administrators.

##### VI. In Quare Impedit.

##### VII. In Replevin.

##### VIII. In Trespass:

1. Generally.
2. Trespass on the Case.
3. In Trespass Quare Clausum Fregit.
4. As to Personal Property.
5. As to Real Property.

##### I. Generally:

Rules to declare, plead, or reply, &c. should be discontinued, *Rep.* iii. 43—Improvements of pleading in particular actions and particular pleas, *ib.* 51, *et seq.*—Regulations proposed as to miscellaneous matters of practice connected with pleading, *ib.* 80-84—Proposal that no pleadings shall require the signature of counsel, *ib.* 82—That the defendant shall not be at liberty to withdraw any plea once pleaded without leave of the court or a judge, *ib.*—Regulation proposed, that no rule to abide by plea shall be necessary, *ib.*—The length of pleadings is one cause of the great expense of common law, *Rep.* iii. *App.* *Anderton* 216.

Query issued by the commissioners, whether the effect of shortening pleadings abolishing useless entries and proceedings might prevent attornies from receiving fair remuneration, supposing the present principles and methods of charge to be retained; also query as to what new principles should be substituted to yield a fair profit; specific propositions suggested, *Rep.* iii. *App.* 12—Answers thereto by serjeants and barrister-at-law, special pleaders, and others, *ib.* 15 *et seq.* 213.

##### II. Pleading in Bar:

Regulation proposed, that the time for pleading in bar shall be ten days, if the defendant lives within twenty miles of London, in other cases fourteen days from declaration, *Rep.* iii. 44. 81.

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III. *In Covenant* :

The pleadings in covenant are perhaps more perfect than in any other action ; more than one count is seldom inserted, and except in particular cases there is no general issue, *Rep.* iii. 53—Title is sometimes unnecessarily and vexatiously denied, but this might be checked by proper regulation as to costs, *ib.*—Difficulty experienced by the plaintiff in tracing back his title to some person who was seised in fee ; allowing the plaintiff to state in general terms only that he has become entitled would be inexpedient, *ib.* 53, 54.

Question circulated by the commissioners, whether any improvements can be proposed in the declaration, pleadings, or proceedings, peculiar to covenants and other actions, *Rep.* iii. *App.* 10—Answers thereto by serjeants and barristers-at-law, special pleaders, and others, *ib.* 14 *et seq.* 212.

IV. *In Detinue* :

Recommendation that the plea of non detinet shall in future put in issue only the fact of detention by the defendant, and that a defence as to the plaintiff's property in the goods be specially pleaded as in replevin, *Rep.* iii. 60. 86.

V. *With respect to Executors and Administrators* :

Nature of pleas peculiar to executors and administrators, *Rep.* iii. 62—Proposed regulation, that no judgment upon confession ought to be pleaded which was not recovered before action brought, *ib.*—Question as to whether any improvements can be proposed in the declaration, pleadings, or proceedings in cases where a party sues, or is sued, as executor or administrator, or issued as heir, *Rep.* iii. *App.* 10 *et seq.*—Answers thereto, *ib.* 14 *et seq.* ; 83 *et seq.* ; 212.

VI. *In Quare Impedit* :

Proposal to leave pleadings in quare impedit as they now are, subject to alterations recommended in respect of actions in general ; certain difficulties will be removed thereby, *Rep.* iii. 61.

VII. *In Replevin* :

Propositions, That the plaintiff be allowed to plead in bar a tender made after impounding of the rent and costs, or damages and costs, or to pay into court such sum as he shall think fit, *Rep.* iii. 60, 61—That the plaintiff still be at liberty to plead to avouries for rent, by putting in issue the tenancy, rent in arrear, authority to distrain, and any others containing distinct and concurrent answers to each avoury, *ib.* 60—That the plea of non cepit should be confined to a denial of the taking only ; and that the defendant in his plea or avoury should state the place and reason, *ib.*—That the plaintiff shall be at liberty to plead in bar a tender of the rent and costs, or a sum for damages and costs, after impounding, or to pay a sum of money into court, *ib.* 86.

VIII. *In Trespass* :

## 1. Generally:

The doctrine as to giving colour recommended to be done away with, *Rep.* iii. 55. 85—In special pleas in actions of trespass the enumeration of trespasses intended to be justified should be omitted, and if part only is intended to be justified, they should be selected and specified, *ib.* 55—The present forms of plea used in actions of trespass to the person or personal property do not require alteration, except as suggested in the enumeration of trespasses, and the formal alterations recommended in the second report as to the commencement and conclusion of pleas in general, *ib.* 56.

Regulations proposed that in trespass the plea may justify in general terms the several "trespasses in the declaration," or in any count of the declaration mentioned without any special enumeration of the trespasses, *Rep.* iii. 85—That in trespass to goods the defendant shall not be allowed to insist, under the plea of not guilty, that the goods are not the property of the plaintiff, but must plead the same specially as in replevin, *ib.*—That where defendant pleads a right of way with carriages and cattle and on foot in the same plea, and issue is taken thereon, the plea shall be taken distributively, and a verdict found for either party accordingly, *ib.*—Regulation proposed where defendant pleads a right of common of pasture for divers kinds of cattle, *ib.* 86—Proposed regulation, that in a plea justifying under a right of way it may be pleaded generally that the defendant, or some one whom he justifies, was possessed of a messuage, &c. and right of way, without showing title more particularly, *ib.*—Proposition that the general replication de injuria shall no longer be allowed, *ib.*

2. *Trespass on the Case* :

There will be no difficulty in framing special pleas in such actions if the general issue be abolished ; of what such pleas will consist ; of what the replication will consist if the general one de injuria be discontinued, *Rep.* iii. 59.

3. *In*

## PLEADING—continued.

VIII. *In Trespass*—continued.3. *In Trespass Quare Clausum Fregit* :

Proposition, that the defendant be at liberty to justify upon possession only, as in trespass to goods, *Rep.* iii. 60—Proposal, that the defendant shall not be allowed to plead the common bar, *ib.* 85—And that where the trespass is justified at a place different from that laid in the declaration, no formal traverse of the latter place shall be used, *ib.*—Regulation proposed that the defendant shall not be allowed to give in evidence, under the plea of not guilty, that the trespasses were committed by way of distress for rent, or that the plaintiff was not in possession, or had no right to possession, or to insist on any defence except a denial of the mere fact that the injury complained of was committed by the defendant, *ib.*—That the defendant, if he means to deny the possession of plaintiff, shall plead such, and if he means to deny the right of possession he shall plead specially, and in what manner, *ib.*—Proposal, that the plea of *liberum tenementum* shall no longer be allowed, *ib.*—And that in trespass *quare clausum fregit* and in *replevin* the defendant may justify upon a title of possession generally, as now in trespass to goods or to the person, *ib.* 86.

## 4. As to Personal Property :

The plea of not guilty should not be allowed to put in issue the question of property, but where the plaintiff's title to the goods is meant to be denied, it should be done by special plea, as is now the practice in *replevin*, *Rep.* iii. 55.

## 5. As to Real Property :

Pleas of justification run to great length, and consist of several pleas ; different pleas where a right of way is asserted, *Rep.* iii. 56—Variation of pleas necessary at present where a right of common is asserted ; mode in which this may be avoided, *ib.*—Variation in pleas justifying under rights of common as well as private way, *ib.* 57—Defendant ought not to be allowed to plead two pleas ; nature of these pleas, *ib.* 57, 58—Replications as to rejoinders in certain cases should be allowed upon variance, as recommended in the second report, *ib.* 58—Inconveniences attending the practice of new assignments ; instances given ; difficulty of suggesting a plan that would give the plaintiff the same advantage he derives from a new assignment or from replication and new assignment combined, *ib.* 58, 59.

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## PLEAS :

1. *Plea in Abatement.*
2. *Plea of Bankruptcy.*
3. *In Bar.*
4. *Of Foreign Attachment.*
5. *Of Misnomer.*
6. *Of Set-off.*
7. *In Trespass Quare Clausum Fregit.*

1. *Plea in Abatement* :

There is no propriety in the general principle which requires pleas in abatement to be treated with greater strictness than pleas in bar, *Rep.* iii. 24—Every plea which is permitted should be treated with equal toleration in courts of justice, *ib.*—Commencements and conclusions of pleadings in abatement proposed to be fixed by one simple and uniform rule ; forms given, *ib.* 24, 25—Present practice as to time within which a plea in abatement must be pleaded, *ib.* 25—Rule that these pleas cannot be pleaded of a term subsequent to the declaration, unless by aid of a particular form of entry, called a special imparlance, for which the leave of the court must be obtained, *ib.*—Time for pleading in abatement proposed to be extended, and no special imparlance to be required, *ib.*—Under the present law no costs are allowed upon demurrer to a plea in abatement, *ib.*—This practice is unreasonable and inconvenient ; costs should be allowed on demurrer, *ib.*

Regulation proposed, that the time for pleading in abatement shall be eight days from the delivery of the declaration, or filing and notice thereof, *Rep.* iii. 44. 81—Regulations proposed as to the form of the commencement and conclusion of pleas in abatement and other pleadings thereon ; and in the replication and other pleadings thereon, *ib.* 76—Regulations proposed as to pleas in abatement, *ib.* 75, 76.

2. *Plea of Bankruptcy* :

Propositions of the commissioners, that the bankruptcy of a defendant should be pleaded shortly in the form now used, as well when the certificate has been obtained after, as before the commencement of the suit, *Rep.* iii. 63—And that the bankruptcy

*PLEAS—2. Plea in Bankruptcy—continued.*

of the plaintiff, whether before or after the commencement of the suit, shall be pleaded specially, but merely stating the fact of the bankruptcy and assignment of the plaintiff's estate, *ib.*

*3. In Bar :*

Regulation proposed for pleas in bar containing new or affirmative matter, being verified by affidavit, *Rep.* iii. 49—Proposed regulation, that plaintiff may sign judgment for want of plea, unless affidavit of verification be made and filed within twenty-four hours after notice, *ib.*—Proposition, that upon all pleas containing new or affirmative matter, the plaintiff be at liberty to apply for a summons to show cause why the same should not be set aside as frivolous, and why the defendant should not pay the costs of the application, the judge on inspection to make order accordingly, *ib.* 50. 83, 84—Form of such affidavit in verification, *ib.* 83—Propositions that such affidavit, if called for by the plaintiff and made, shall be at his expense, *ib.* 84—That unless such affidavit be made and filed within twenty-four hours after notice, the plaintiff may sign judgment for want of a plea, but with liberty to defendant to apply that the verification may be dispensed with, or for time to make it, *ib.*

*4. Pleas of Foreign Attachment :*

The plea of foreign attachment is unnecessarily prolix, and might be easily reduced to less dimensions by a more compendious statement of proceedings, *Rep.* iii. 63.

*5. Pleas of Misnomer :*

Inconvenience of the present state of the law on the subject of misnomer, *Rep.* iii. 22—Amendment in this branch of the law recently effected in regard to criminal proceedings, *ib.*—General and strong opinion, that the plea of misnomer in civil actions ought to be entirely abolished, *ib.*—Where the action is founded on a bill of exchange or promissory note, the plaintiff should be at liberty to designate the defendant in the declaration by such initial letters or abbreviations as he himself used in his signature to such bill or note, *ib.* 23. 75, 76—Misnomer in the declaration proposed to be no ground for plea; how and by whom costs incurred in correcting a misnomer should be taxed and paid, *ib.* 23. 75—New regulations as to misnomer in process proposed *ib.* 23.

Regulations proposed, that upon misnomer in process defendant may appear in his right name, describing himself to have been sued in the wrong one; appearance, by default, by plaintiff to be in the right name, and declaration accordingly, *Rep.* iii. 75—And that if the plaintiff deliver an amended declaration, the costs incurred by the defendant shall be taxed against the plaintiff whatever may be the event of the cause; but bail shall not be discharged by such amendment, and in all cases defendant shall have the same time to plead in abatement or in bar, after delivery of amended declaration, as remained at the time of the delivery of the affidavit, *ib.* 76—Questions circulated by the commissioners, whether it would be advisable to abolish the plea of misnomer in civil actions, and whether it would be desirable in actions on bills or notes, that defendants describing themselves thereon by initials should be named in the declaration by initials, *Rep.* iii. *App.* 9—Answers thereto, *ib.* 13 *et seq.* 211.

*6. Set-off :*

Recommendation of the commissioners that whether the general issue be abolished or retained, a set-off be always pleaded, and that the defendant should add to his particulars of set-off a notice that he means to insist that his set-off exceeds the plaintiff's demand, and that he claims to recover the surplus, which if the jury find, he shall be entitled to judgment and execution for the excess, *Rep.* iii. 62—The plea and notice of set-off are given by statutes 2 Geo. 2, c. 22, and 8 Geo. 2, c. 24, and are in the nature of a cross demand; they are confined to debts, and cannot be used where the plaintiff's or defendant's demand is for uncertain damages; proposal that they be still so confined; reasons for such proposition, *ib.*

*7. In Trespass Quare Clausum Fregit :*

What the plea of not guilty in trespass quare clausum fregit is considered to be a denial of; evidence allowed to be given under that form by 11 Geo. 2, c. 19, s. 21; this enactment recommended to be repealed; mode of pleading suggested, *Rep.* iii. 54.

See also *Judgment*, 7. *Sham Pleas.* *Withdrawal of Pleas.*

*Policies.* Regulations proposed, that in actions on marine policies of insurance the interest of the assured may be averred according to a form set forth, *Rep.* iii. 84—That the loss on policies may be also so averred, *ib.*

*Poor Debtors.* Suggestion for Act 52 Geo. 3, c. 160, being extended to poor debtors in execution, *Rep.* iii. *App.* *Jewison* 265.

*Poundage.*

**Poundage.** The poundage paid to sheriffs increases the expense of common law proceedings, *Rep. iii. App. Anderton* 216—The poundage paid to sheriffs on ca. sa's. should be abolished, especially where no part of the debt is received, *ib.* 223.

**Practice of the Courts.** The practice of the courts with respect to amendments in general proposed to be defined and regulated, *Rep. iii.* 31—General suggestions on miscellaneous matters of practice, *ib.* 37, *et seq.*—Great need of revision and reform in which the practice stands; variety existing between the different courts in respect of their rules and forms of proceeding, *ib.* 37—The abolition of this diversity in general practice is to be recommended; carrying into effect the suggestion of the first report, as to substituting the forms of summons and *capias* for proceedings by bill and original, would be the first step towards its accomplishment, *ib.*—The practice of the several courts could then be assimilated, and an authorized book of practice drawn up, *ib.* 37, 38—Mode proposed for carrying into effect such plan for a book of practice; Parliamentary sanction requisite, *ib.* 38, 39—Suggestion that the practice of the three courts should be assimilated, *Rep. iii. App. Anderton* 221.

The courts have no code of practice; books of practice published by private individuals supply the want of an official compilation, *Rep. iii.* 37—Regulation proposed, that there shall be promulgated by authority of the judges one book of practice for the three common law courts at Westminster, *ib.* 80—Proposition, that no new edition of the book shall be published until the alterations which it may contain shall have been submitted to the judges, and the publication of such new edition shall have received their sanction in the shape of a *Regula Generalis*, *ib.*—Question circulated by the commissioners as to whether provision should be made, directing the judges to cause to be drawn up under their revision one uniform system of practice for the several courts, and directing them to revise this system when necessary; and as to whether any other plan is preferable for the complete and permanent regulation of the practice of the three courts, *Rep. iii. App.* 10—Answers thereto by serjeants and barristers-at-law, special pleaders and others, *ib.* 13 *et seq.* 212—Query as to how far it would be desirable to abolish the making up the paper book in the King's Bench; to provide in all courts for the delivery of pleadings after appearance, and for issues being made up by the attornies; also query as to whether the passing the *nisi prius* record should be discontinued; whether one roll should serve the purpose of *nisi prius* record and judgment roll, and one jury writ only should issue; whether all rules of a formal sort should be discontinued, and notice or demand substituted; and the signature of counsel only be required to demurrers, *Rep. iii. App.* 10—Answers thereto, *ib.* 14 *et seq.* 212.

**Præcipes for Distringas.** Suggestions with regard to the entry of præcipes for distringas, *Rep. iii. App. Crowther* 250.

**Process.** See *Jury Process*.

**Profert and Oyer.** The present practice of profert and oyer, though in its present form chargeable with many defects, is in its principle of the highest importance; instances given, *Rep. iii.* 45—Documents which are included in, and excluded from, the law of profert and oyer, *ib.* 45—Description of writings that should come within the law of profert and oyer, *ib.* 45, 46—Statement of regulations as to the practice of profert and oyer, showing that it is too strict, intricate, and prolix, and in some parts obscure and unsettled; that it was devised during the practice of oral pleadings, and should be abolished, *ib.* 46–48—Objectionable state of the practice in respect of the exceptions which it allows in certain cases as to the writings which ordinarily fall within its operation, *ib.* 46—Whenever a party has occasion to plead any written instrument, and the same is presumably in his possession or power, profert shall be made, or a sufficient excuse for the omission shown, *ib.* 46. 82.

Rules proposed to be established for removal of inconveniences pointed out in the practice of profert and oyer, *Rep. iii.* 48. 82 *et seq.*—Propositions that a party demanding oyer where not entitled to it, his adversary may sign judgment for want of a plea, or apply for a rule or summons to show cause why he should not sign judgment as if no such demand of oyer had been made, *ib.* 48—That where an instrument after profert is set forth by the opposite party either according to tenor or effect, the instrument as so set forth shall not be considered as pleaded by the party making profert, *ib.*—That in all cases not provided for by the proposed regulations, where by the present practice the court or a judge would make an order for inspection of a written document, the present practice may be pursued, *ib.*—Mode of allegation proposed to be adopted by the party demanding oyer, and having occasion to show the contents of an instrument; mode of allegation to be adopted by the other party; such part of the instrument only to be alleged as the party shall think convenient, *ib.*—Rules proposed, that deeds or instruments of which profert is made, shall on such profert not be considered as produced or read in court, but merely as exhibited out of court to the party demanding, and copied for his use, *ib.*—That upon profert, the opposite party shall be entitled to demand oyer, and a copy as now by law entitled; proceedings to be adopted in the event of the copy being incorrect, *ib.*—That no prayer of oyer or of enrolment shall in any case be made in the pleading, or entered on the record, *ib.*

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*Accommodation Bills.* A plan that would do away with positive accommodation paper would be beneficial, *Rep. iv. App. 30 D.*

*Accommodation Fees.* Rate of the civility fee paid to city officers, *Rep. iv. App. 47 D.*

*Action of Adjudication (Scotland).* Nature and effect of this proceeding against real property in Scotland, *Rep. iv. App. 77 D.*

*Action of Forthcoming (Scotland).* Under what circumstances this proceeding becomes necessary; nature and effect thereof, *Rep. iv. App. 77 D.*

*Action of Mails and Duties (Scotland).* Nature of this proceeding on executions against real property, *Rep. iv. App. 84 D.*

*Action of Multiplepoinding (Scotland.)* Use of this action; proceedings under it, *Rep. iv. App. 77 D.*

*Action of Ranking and Sale (Scotland).* Necessity for this proceeding in execution against real property, *Rep. iv. App. 84 D.*

*Action of Reduction (Scotland).* In what cases a party would be entitled to an action of reduction ex capite inhibitionis, *Rep. iv. App. 76 D.*

*Actions.* Reference to tables in the Appendix to the First Report of the Commissioners, as to the number of actions brought and tried, &c., showing that, in a majority of instances the defendant compromises, and that consequently the actions were well founded, *Rep. iv. Paper by Mr. Stephen 82*—Footings upon which actions for debt should be placed, *Rep. iv. App. 7 D.*—See also *Defended Actions. Trial. Undefended Causes.*

*Acts of Bankruptcy and Insolvency.* A compulsory act of bankruptcy cannot be committed in less than twenty-one days, *Rep. iv. App. 26 D.*—Acts that should be considered acts of insolvency; power of compelling debtors to divide their property among their creditors, proposed to be given to creditors, *ib.*

*Acts of Parliament.* See *Insolvent Acts.*

*Actual Custody.* Great advantage would result if debtors were allowed to avail themselves of the benefit of the Insolvent Act without being in actual custody, *Rep. iv. App. 63 D. 66 D.*—Better estates would come to the Insolvent Court if it were not for the necessity of previous custody, *ib. 75 D.*—The benefit of the Act might be allowed without actual custody, provided the power of hostile arrest were retained, *ib. 90 D.*—A debtor, after final judgment, should be subject to examination before a court as to his property, and should make cession thereof, but without imprisonment, except in cases of refusal, *ib. 132 D.*

*Adjournments (Insolvent Debtors' Court).* Any creditor may move that a case stand over for an inquiry to be made into the truth of a man's schedule before an officer of the court, *Rep. iv. App. 91 D.*

*Affidavit of Debt.* Resort cannot be had in England to a bailable writ without first making a distinct and absolute affidavit of debt, *Rep. iv. Paper by Mr. Stephen 82*—Affidavits of debt should always be sworn within the United Kingdom, and should contain an allegation that the deponent is a British subject, and ordinarily resident in this country, *ib. 83.*—See also *Perjury. Scotland.*

*Aldam, Peace, Birchall & Co., Messrs. (Their Answers to Queries.)*—Of Leeds; arrest takes place when property is in danger; diminution in credit would operate as a benefit; giving a power of subsequent arrest would be beneficial; proposed majority of creditors that should consent to voluntary cession, *Rep. iv. App. 162 B.*

**Alders & Hansell, Messrs.** (Their Answers to Queries.)—Merchants of Hull; only shuffling debtors are arrested; abolishing the power of arrest would be injurious to credit; a creditor should always have the power of holding to bail; evils of the Insolvent Acts, *Rep. iv. App. 154 B.*

**Alexander, L. & E. N., Messrs.** (Their Answers to Queries.)—Of Halifax, Yorkshire; proportion of bailable to serviceable writs issued; frauds under the Insolvent Act; execution against the person is useless, *Rep. iv. App. 80 c.*

**Aliment.** Amount of aliment required to be allowed by creditors to debtors in Scotland; proceeding necessary to obtain it, *Rep. iv. App. 78 D.*—The allowance of aliment is of great advantage in preventing arrests for small debts, *ib. 83 D.*—Creditors should be compelled to allow aliment if they had the power of compelling the appearance of the debtor before the Insolvent Court, *ib. 98 D.*—Objection to aliment being paid by creditors from the time of arrest, *ib. 112 D.*—See also *Prison Allowance.*

**Allerby & Fall, Messrs.** (Their Answers to Queries.)—Bankers, Southampton; under an arrest there is a greater likelihood of the debt being recovered more quickly; little mischief would arise from credit being diminished; majority of creditors who should consent to a voluntary cession, *Rep. iv. App. 159 B.*

**Allowance to Insolvents.** Allowance should be made to insolvents in proportion to the dividend paid, *Rep. iv. App. 30 D.*—See also *Aliment.* *Prison Allowance.*

**Alston, J. & W., Messrs.** (Their Answers to Queries.)—Cotton manufacturers, Blackburn; it is usual to arrest if the debtor is suspected of converting his moveables into cash; in what cases subsequent arrest should be allowed; terms on which voluntary cession should be allowed, *Rep. i. App. 163 B.*

**Ambassadors, Consuls, &c.** Questions addressed to the ambassadors and consuls of Great Britain and Ireland, and other persons resident in Europe and America, on the subject of arrest, *Rep. iv. App. 1 A.*—Answers thereto, *ib. 1 A.-48 A.*

**America.** See *United States.*

**Amount of Debt.** With respect to large debts, the power of arrest affords so little security, except where a debtor is suspected of an intention to abscond, that it is seldom resorted to; for the ordinary consequence is, that it merely produces bail, *Rep. iv. 20.*

By the ancient practice of the superior courts, special bail was not required unless the debt amounted to 20*l.*, *Rep. iv. 32*—Bail was then required to be put in before a judge of the court, who exercised his discretion as to the bail according to the validity and weight of the cause, *ib.*—Reason assigned in favour of the ancient practice, by Lord Chief Baron Gilbert, in his History of the Common Pleas, *ib.*—It is probable that when the sum of 20*l.* was first adopted as the minimum in respect of which a debtor was compellable to find special bail, it was at least equal to 80*l.* in present money, *ib.*

Proposition of the commissioners, that after the suggested provision being made for the protection of the creditor, no one shall be arrested for debt unless the plaintiff or his attorney shall make oath that 20*l.* is due, and that he believes the defendant is about to abscond, *Rep. iv. 33*—Difficulty of determining as to what sum may be considered too small to be properly entitled to the benefit of such mode of proceeding as arrest before judgment, *Rep. iv. Paper by Mr. Stephen 81.*—See also *Arrest, IV. 2.*

**Ancillon, Monsieur.** Letter from Monsieur Ancillon to Mr. Chad, enclosing answers to questions circulated by the commissioners on the subject of arrest in Prussia, *Rep. iv. App. 31 A.*

**Anderson, R. H.** (His Answers to Queries.)—Of York; preference to be given to bailable process; bailable suits are generally unproductive after plea; evils of the Insolvent Acts; improvements suggested in the law of arrest; execution against the body or goods; all property should be rendered available to creditors, *Rep. iv. App. 31 c. 32 c.*

**Anderson, Mr. R. H., of York.** Extract from his evidence, stating the mode in which the power of holding to bail is advantageous, *Rep. iv. Paper by Mr. Stephen 72.*

**Anglesey, County.** Returns by the sheriff of the county of Anglesey of warrants issued out of the courts at Westminster, 12 February 1830 to 12 February 1831, and of the results thereof; also of persons in custody, *Rep. iv. App. 2 E. 68 E. 92 E. 126 E. 138 E. 166 E.*—Similar returns of warrants issued out of the Courts of Great Sessions, and of the results thereof, and of persons in custody, *ib. 2 G. 6 G. 8 G. 10 G. 11 G. 13 G.*—Returns of warrants issued from borough, and other local courts, and also of prisoners in custody, *Rep. iv. App. 2 H. 42 H. 51 H. 60 H. 68 H.*—Returns of all process issued from borough and other local courts, *ib. 2 I.*

**Annuities.** See *Property of Debtors, 4.*

*Appeals*

**Appeals (Scotland).** There is an appeal to the Court of Session from the small debt courts, but only in cases of corruption of the judge; it is seldom made use of, *Rep. iv. App. 82 D.*

**Appearance.** Opinion of the commissioners that the personal appearance of the debtor, for examination, for inquiry and for punishment in case of fraud, ought to be secured, *Rep. iv. 42*—These objects might be attained by actual imprisonment, or requiring bail in the case of fraud, *ib.*—And by imposing penalties in the case of those who shall neglect to appear, *ib.*

Imprisonment pending inquiry should be dispensed with, at all events where the debtor found bail or security for his appearance for personal examination, and to answer any charge of fraud to be made against him, *Rep. iv. 43*—Even in the case of a bankrupt, imprisonment for the purpose of safe custody is not required, *ib.*—The keeping the debtor in custody, in order to secure his personal attendance, without any suggestion that he is likely to abscond, is too severe a measure, *ib.*

Personal appearance of the defendant in the suit is not required in Scotland, neither is personal service necessary, *Rep. iv. App. 164 D.*

See also *Serviceable Process, 3.*

**Armstrong, R. B. (His Answers to Queries.)**—Barrister; serviceable process generally recommended; under what circumstances debts are usually paid on bailable and serviceable process; after plea, bailable suits are rarely productive to the creditor; instance of abuse of the power of arrest; the Insolvent Acts hold out temptations to fraud, *Rep. iv. App. 14 C. 15 C.*

(Analysis of Evidence given before the Commissioners.)—Objection to arrest, *Rep. iv. App. 132 D. 133 D.*—Costs of defence on serviceable process will induce payment as much as arrest, *ib. 132 D.*—More causes would not be defended if arrest were abolished, *ib. 133 D.*—All property should be available to the creditor, *ib. 133 D. 135 D.*—Cession of property should be compelled, *ib.*—Fraudulent concealment should be punished criminally; objection to summary proceedings on bills of exchange, *ib. 135 D. 136 D.*

**Arrangement with Creditors.** In Scotland debtors often go into the sanctuary, or abscond till an arrangement can be made with their creditors, *Rep. iv. App. 82 D.*

#### ARREST:

##### I. *Origin and Operation of the Law of Arrest and Imprisonment:*

1. General View of the Law in England, and its Practical Effects.
2. State of the Law in Scotland.
3. State of the Law in Foreign Countries.
4. Bailable and Serviceable Process.
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##### II. *Evils attendant upon the present Law; its Abolition urged:*

1. Generally.
2. Its injurious Effect upon Debtors.
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4. Grounds on which it should be abolished,

##### III. *Expediency of retaining the Power of Arrest:*

1. Respects in which it is advantageous.
2. Mischief that would result from abolishing it.

##### IV. *Modifications in the Law suggested:*

1. Generally.
2. As regards the Amount for which Arrest should be allowed.

##### I. *Origin and Operation of the Law of Arrest and Imprisonment:*

1. General View of the Law in England, and its Practical Effects.

General view of the law of England, on the subject of arrest and imprisonment for debt, as well on mesne as on final process, and of the principal changes which the law has undergone, *Rep. iv. 5*—The object of arrest is in all cases to insure the appearance of the defendant, *ib. 6*—He is therefore compelled either to give bail to the sheriff for his appearance, or to remain in custody until the return of the writ, *ib.*—The present practice of arrest has its origin in one or the other of two fictions, *ib. 32*—Either that the defendant has contumaciously disobeyed the process of the court, or that he has committed a breach of the peace, *ib.*—Objects of proceeding by arrest; the power might



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be made oppressive, *Rep. iv. App. 22 D.*—In what cases it is usual to proceed by arrest; it has not been usual of late years to resort to that process in cases of poor persons for small debts, *ib. 52 D.*

Practical effects of the present system of arrest on mesne process, and its comparative advantages and disadvantages, *Rep. iv. 5*—Arrest is resorted to by the smaller class of dealers, but very rarely by respectable merchants, *Rep. iv. App. 19 D.*—Inducements to arrest; it is difficult to say whether its advantages or disadvantages preponderate, *ib. 73 D.*—Arrests, for the purpose of taking the benefit of the Act, are in the country principally induced by hostile creditors, *ib. 74 D.*—Proportion of those taking the benefit of the Act to those arrested, *ib. 100 D. 101 D.*—General evidence upon the effects of the law of arrest, *ib. 108 D. 110 D.*—Arrest is frequently resorted to, because there are no other means of procuring a distribution of the debtor's effects, *ib. 186 D.*

**2. State of the Law in Scotland :**

Statement as to the law of arrest in Scotland, showing its operation; opinion that it could not be effectually introduced into England, *Rep. iv. Paper by Mr. Stephen 85*—Nature of arrestment or attachment of moveable property in Scotland, *Rep. iv. App. 77 D.*—Arrestment in Scotland is against goods in the hands of third parties, but not against those in the possession of the defendant, *ib. 165 D.*—Further evidence relative to the law and practice of arrestment in Scotland, *ib. 168 D.*

Arrest for debt in the first instance would not be an advantage in Scotland, *Rep. iv. App. 81 D.*—Although by the present law of Scotland a fraudulent debtor has the power of evading a just debt till the decree, still it would not be advisable to allow arrest in the first instance, *ib. 81 D. 82 D.*—Arrest would not be convenient in Scotland; imprisonment very seldom takes place, although there is the power; security of the real and personal estate is sufficient, *ib. 165 D.*—The Scotch method of attaching goods is preferable to the English method of arrest, *ib. 167 D.*

Memorandum on the law of personal arrest for debt in Scotland, referred to in the evidence of Mr. William Bell, *Rep. iv. App. 160 D. 161 D.*

**3. State of the Law in Foreign Countries :**

No arrest on mesne process takes place in France, Holland, Spain, or Canada, *Rep. iv. App. 146 D.*

Questions circulated by the commissioners as to the state of the law in various foreign countries in regard to arrest; 1st, As to whether arrest for debt is permitted in the first instance by way of precaution or security, before any judgment of a court or tribunal has been obtained; 2d, If arrest be permitted, whether it is allowed in all cases of debt, or only in particular cases, and founded on the oath of the creditor or otherwise; 3d, Whether arrest for debt is permitted after judgment in all, and in what cases; 4th, Whether, if arrest for debt in the first instance be allowed, the effect of such a proceeding in affording security to the creditor, as compared with the disadvantage to the debtor; and whether it could safely be dispensed with or advantageously altered; and, 5th, Whether arrest for debt after judgment is necessary to enforce payment, *Rep. iv. App. 1 A.*—Answers to the foregoing questions by ambassadors and consuls of Great Britain and Ireland, and other persons resident in Europe and America, *ib. 2 A. et seq.*—Also by writers to the signet, Scotland, *ib. 44 A. 47 A.*

**4. Bailable and Serviceable Process :**

Bailable and serviceable process compared as regards the power of a debtor to set his creditor at defiance, *Rep. iv. App. 35 D.*—Bailable process is not more effective than serviceable process, *ib. 400*—In what cases it is usual to issue bailable and in what serviceable process, *ib. 44 D.*—At what periods of the action, under both descriptions of process, a settlement usually takes place, *ib. 45 D.*—Bailable process is more likely to produce a settlement; proportion of such writs issued, *ib. 48 D.*—Great advantages of bailable over serviceable process, *ib. 176 D. 177 D.*—Compromises are sometimes effected by giving notice that a bailable writ is issued, but without actually arresting, *ib. 188 D.*

**5. Answers to Queries issued by the Commissioners :**

Questions circulated by the commissioners as to, 1st, Whether there are any instances where the power of arrest on mesne process has been abused for vexatious purposes; 2d, Whether any inconveniences or loss of credit is sustained by debtors who have been arrested and are solvent, but unable to procure bail; 3d, As to whether the right of arrest on mesne process is productive of hardship or oppression; 4th, Whether the power of holding a debtor to bail on mesne process is advantageous; 5th, Whether the power

## ARREST—continued.

I. *Origin and Operation of the Law of Arrest and Imprisonment*—continued.5. *Answers to Queries issued by the Commissioners*—continued.

power of arrest might be altered or modified as to the amount of the debt, in respect of which the debtor may be held to bail; or by any limitation as to the nature of the debt; or by any limitation as to the class of persons subject to arrest; or the circumstances under which it ought to be allowed; 6th, As to the means of improving the present system of arrest on mesne process; and, 7th, Whether it is desirable in cases where the plaintiff has not thought proper to arrest a defendant in the first instance, to allow him a discretion of holding him to bail, in a subsequent stage of the proceedings, *Rep. iv. App. 1 c.*—Answers to the foregoing questions by the profession generally, *ib. 3 c. et seq.*

Questions circulated by the commissioners as to, 1st, By what considerations in proceedings by action at law against debtors the election to proceed by arrest rather than serviceable process is usually governed; 2d, As to whether it is usual to arrest where the debtor is solvent, or where there is no reason to suspect that he is insolvent or meditates a removal of his personal property; 3d, As to whether the right of arrest in some instances is productive of hardship and oppressive to the debtor even where he is solvent; 4th, Whether the knowledge of a debtor's having been arrested by one creditor without explanation of the circumstances, would injure his credit and induce other creditors to sue out process against him; 5th, Whether, if the right to arrest on mesne process were to be taken away, the facility of obtaining credit would be materially diminished; 6th, Whether if credit were diminished, such diminution would be productive of any inconvenience; 7th, As to whether the power to arrest induces bankers, merchants, or traders, to give credit too easily, or leads to a facility of obtaining credit; 8th, Whether the liability to arrest operates practically as a check to prevent improvident trading; and, 9th, Whether it would be desirable in cases where the plaintiff has not thought proper to arrest a defendant in the first instance, to allow him a discretion of holding him to bail in a subsequent stage of the proceedings, *Rep. iv. App. 1 B.*—Answers to the foregoing questions by bankers, merchants, and others, *ib. 2 B. et seq.*

II. *Evils attendant upon the present Law; its Abolition urged:*1. *Generally:*

The most striking evils consequent upon the practice of arrest are recited in the preamble the statute Geo. 1, c. 29, *Rep. iv. 6*—By that statute arrest upon mesne process for causes of action under 10 *l.* was prohibited, *ib.*—And plaintiffs were authorized in case a defendant who had been duly served with process should not appear within a certain time after the return of the writ, to enter an appearance for him, *ib.*

Arrest, as an experiment, is an expensive and defective one, *Rep. iv. 16*—Arrest is frequently productive only of further expense, and of the conveyance of the debtor to gaol, in addition to the total loss of the debt and of the costs already incurred, *ib.*—Even where a debt is due the process of arrest is frequently used oppressively and without necessity, *ib. 24*—There is reason to believe that arrests are by no means unfrequent where no debt is due, *ib.*—Great evils attendant upon the present law of arrest; means by which they might be obviated, *ib. 44, 45.*

The abuses of the system greatly exceed the benefits, *Rep. iv. App. 133 D.*—Various objections to arrest pointed out, *ib. 143 D. 144 D.*—Arrests may take place on the oath of a man convicted of perjury, no inquiry being made as to the deponent's credibility, who may immediately abscond, *ib. 147 D.*—The fear of arrest induces many persons to leave the country, *ib. 149 D. 150 D.*—Effect of the power of arrest, *ib. 157 D. 159 D.*

2. *Its injurious Effect upon Debtors:*

Where there are several creditors, the first arrest creates alarm; successive arrests produce a great waste of funds in law expenses, and consequently diminish the property of the debtor, *Rep. iv. 9*—Inducements to arrest; effect thereof on debtors, *Rep. iv. App. 15 D.*—Difficulties defendants have to encounter on being arrested, particularly as to procuring bail, *ib. 50 D.*—Mischiefs arising from arrest on mesne process, *ib. 67 D.*—Effect of arrest on the health and morals of debtors; demoralization that results, *ib. 71 D. 98 D. 112 D. 120 D. 121 D.*—Instances of one arrest producing many others, even on the same day, *ib.*

3. *Respects in which prejudicial to Creditors:*

The effect of the law of arrest is to induce creditors to pursue severe measures against debtors, *Rep. iv. 19*—The demoralization of traders has very much increased, which is attributed principally to the Insolvent Debtors' Court, *Rep. iv. App. 5 D.*—Arrest is prejudicial to the creditor, *Rep. iv. App. 24 D. 121 D.*—The privilege of arrest is greatly abused, and is productive of the most serious inconveniences; as a general system it produces no advantage to the creditor; its mischievous effects pointed out, *ib.*

*ARREST*—continued.II. *Evils attendant upon the present Law; its Abolition urged*—continued.3. *Respects in which prejudicial to Creditors*—continued.

123 D. 124 D. 126 D. 127 D. 130 D. 131 D.—Arrest is in many cases perfectly ineffectual for the protection of the creditor, *ib.* 132 D. 136 D.—Arrest is seldom if ever beneficial, even to the creditor; the practice should be abolished generally; it is more profitable to attornies than serviceable process, *ib.* 140 D.

4. *Grounds on which it should be abolished:*

The practice is to a remarkable degree repugnant to the spirit and policy of the law of England, and the anxiety which is constantly manifested for the protection of the natural rights of personal liberty and reputation, *Rep.* iv. 31, 32.—Arrest was originally introduced into our law as a remedy against fraud, and not as an auxiliary to a civil contract, or meant to enforce an obligation arising upon a simple act of credit, *Rep.* iv. *App.* 129 D.—Lord Coke and Lord Holt have declared arrest on mesne process to be illegal, *ib.* 147 D.—Arrest on mesne process is contrary to the principles on which our constitution founded on Magna Charta exists, *ib.* 147 D.

Arrest should be done away with altogether, and other means of compelling appearance and obtaining possession of property should be adopted, *Rep.* iv. *App.* 16 D.—Arrest is of no further use than as an assistance to the creditor to get at his debtor's property, *ib.* 27 D.—The security of the creditor would not be shaken by the abolition of the law of arrest, *ib.* 38 D.—It would be advantageous to abolish imprisonment for debt on mesne process; reasons in detail, *ib.* 90 D.—Arrest on mesne process and in execution should be abolished, *ib.* 138 D.—Reasons in detail why arrest for debt should not be allowed, *ib.* 148 D.—Ground on which arrest should be abolished, except on special cause shown, *ib.* 184 D.

Whether arrest on mesne process could be advantageously done away with, if the power of execution were extended over all property, *Rep.* iv. *App.* 21 D.—The power of arrest might be advantageously given up, if a judgment obtained by one creditor could be made an act of bankruptcy, and be available to all the other creditors, *ib.*—If all property were liable to debts, and debtors could only be discharged with consent of their creditors, arrest might be done away with in a great degree, *ib.*—Execution against the body could be better given up than arrest on mesne process, *ib.* 22 D.—Arrest might be abolished if the distribution of effects among creditors could be substituted, *ib.* 25 D.

III. *Expediency of retaining the Power of Arrest:*1. *Respects in which it is advantageous:*

Principle which has been relied on in support of the practice of arrest adverted to by the commissioners, *Rep.* iv. 31 *et seq.*—It is urged that in a majority of cases where an arrest takes place, the debt is due and the arrest beneficial to the creditor, *ib.* 31.—This general position must depend on an attentive consideration of the advantages derived from the practice, compared with the evils consequent upon it, *ib.*—Observation of the commissioners, that they are by no means satisfied that the doctrine of expediency is properly applicable under circumstances like the present, *ib.*

Abuses of the power of arrest are extremely rare, *Rep.* iv. *Paper by Mr. Stephen* 82.—In England the seizure of the person is justly preferred to attachment of the property; precautions by which that proceeding is guarded, *ib.*

Arrest is usually adopted in cases of debt; it is the most effectual course to obtain payment, *Rep.* iv. *App.* 1 D.—This mode of proceeding is most advantageous to the creditor, *ib.*—Creditors do not arrest till they can do nothing else with their debtors, *ib.* 5 D.—Arrest under a judge's order in a subsequent stage of proceedings would not be so advantageous as the present power, *ib.* 23 D.—Advantages of arrest; that power should be retained, *ib.* 32 D. 34 D.—Arrest is such a common occurrence now, that it does not produce that injury to a man that it did twenty-five years back, *ib.* 49 D.—Advantages of arrest; the system should not be altered or modified, *ib.* 58 D. 59 D.—Advantages of arrest on mesne process, *ib.* 101 D.—Great advantage of arrest over serviceable process; evils that would result from abolishing that power, *ib.* 114 D. 115 D.

The power of arrest is advantageous in the event of contemplated removal or absconding, *Rep.* iv. *App.* 16 D.—Arrest is an advantage; it prevents litigation; it should be confined to bonds or bills of exchange, or accounts settled, *ib.* 46 D.—In what respects arrest is advantageous, *ib.* 104 D.—In cases of fraud or embezzlement, and absconding, arrest may be advantageous, *ib.* 125 D.—In what cases arrest may be advantageous in procuring payment of the debt of the arresting creditor, though perhaps at the expense of the other creditors, *ib.* 181 D. 182 D.—The fear of arrest is more useful in producing payment than arrest itself, *ib.* 182 D. 183 D.—The knowledge of the power of arrest is more useful than the actual practice, *ib.* 190 D.

2. *Mischief*

## ARREST—continued.

II. *Expediency of retaining the Power of Arrest*—continued.

## 2. Mischief that would result from abolishing it :

Abolishing arrest in the first instance would be no boon to the honest man, and it would be a very great advantage to a rogue, *Rep. iv. App. 19 D.*—Abolishing the law of arrest would be very injurious ; instance given in proof, *ib. 20 D.*—Taking away the power of arrest would be a dangerous experiment, *ib. 23 D.*—If arrest on mesne process be abolished, the creditor will have no security at all, *ib. 28 D.*—It would not be safe to dispense with arrest altogether, *ib. 58 D.*—The abolition of arrest is not to be recommended in the present state of the law, *ib. 67 D.*—The abolition of arrest on mesne process would destroy the only sanction which the wholesome credit of the country has, *ib. 101 D.*—Arrest for debt is absolutely necessary unless all property could be secured to creditors, *ib. 103 D. 104 D.*

IV. *Modifications in the Law suggested :*

## 1. Generally :

Alterations which the commissioners think it advisable to make in the law upon the subject, *Rep. iv. 5*—Inquiries and suggestions on the subject of arrest and imprisonment for final process, *ib.*—Opinion of the commissioners, that a modification of the power of arrest would be beneficial, *ib. 31*—Suggestions for the alleviation at least, if not for the total removal of the mischief and inconvenience of which creditors chiefly complain, and against which the power of arrest is no effectual remedy, *ib. 33*.

Regulations by which abuse of the power of arrest might be effectually checked, *Rep. iv. Paper by Mr. Stephen 83*—Measures recommended to be adopted for modifying the system of arrest on mesne process, rather than abolishing it altogether at first, *ib. 86*—Arrest for debt should not be allowed in the first instance ; a debtor should be liable to be seized if he does not answer process issued against him, *Rep. iv. App. 18 D.*—The present power of arrest compared with the proposed plans of doing away with it, *ib. 31 D. 32 D.*

Creditors should have concurrent powers of arrest and seizure of property, *Rep. iv. App. 32 D. 33 D.*—Plaintiff should make deposit or give security, so as to prevent vexatious arrests, *ib. 102 D.*—Suggestions under which arrest might be allowed, *ib. 125 D. 126 D. 127 D. 129 D.*—Arrest on mesne process should be allowed on special application in cases of expected flight or removal of property, *ib. 138 D.*—Subsequent arrest should be allowed, and that in a summary manner in the event of meditated flight, *ib. 138 D. 139 D.*

In the event of meditated flight, a judge should have the power of ordering arrest, *Rep. iv. App. 140 D.*—Objection to summary arrest in case of meditated flight, unless the power be in the hands of a high functionary, *ib. 142 D.*—Axioms and maxims premised as preliminary to an alteration of the principle of arrest on mesne process by Mr. William Bell, *ib. 162 D. 164 D.*

## 2. As regards the Amount for which Arrest should be allowed :

Probability that if the lowest amount at which arrest is permitted were to be still further lowered, the power of arrest would be still more efficacious, *Rep. iv. 9*—Amount for which arrest should be allowed, *Rep. iv. App. 5 D.*—Whether it is more difficult to obtain payment of debt under than over the arrestable amount, *ib. 29 D. 40 D.*—The present law as to the amount of arrest is very well settled, *ib. 51 D.*—There is more difficulty in recovering debts under than above the arrestable amount, *ib. 40 D.*

The arrestable amount should not be increased, *Rep. iv. App. 24 D.*—The arrestable amount should be reduced, *ib. 34 D.*—The arrestable amount ought to be reduced rather than increased, *ib. 57 D.*—The arrestable amount should be somewhat increased, *ib. 73 D.*—The arrestable amount is too high at 20*l.*, *ib. 93 D.*

The great chance of recovering debts would be by not arresting under 50*l.* *Rep. iv. App. 46 D. 47 D.*—It is to the prejudice of both parties to issue bailable writs under 50*l.*, unless under special circumstances, *ib. 52 D.*—Under 50*l.* an arrest might be allowed on application to a judge, *ib. 56 D.*—Objection to abolishing arrest ; it should not take place for sums under 50*l.*, *ib. 87 D.*

See also *Bailable Process.* *Claims.* *Credit.* *Damages.* *Execution.* *Final*  
*Process.* *France.* *Friendly Arrests.* *Frivolous and Vexatious Arrests.*  
*Judges.* *Judgment.* *Malicious Arrests.* *Mesne Process.* *Minors.*  
*Notice of Arrest.* *Payment of Debts.* *Preference.* *Privilege from Arrest.*  
*Property of Debtors, 1.* *Scotland.* *Serviceable Process.* *Solvent Debtors.*  
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**Austria.** In Austria the creditor in whose favour judgment has been given is permitted not only to seize the property, but alternatively the person, in execution, *Rep. iv. Paper by Mr. Stephen 55*—In what cases, and by what authority, arrest is allowed in Austria; means of liberation from prison; liability of property for debt, *Rep. iv. App. 16 A.*

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## BAIL:

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**Bankrupt Laws.** The inadequacy of the ordinary proceeding by a suit at law to meet the exigencies of commerce occasioned the necessity for enacting a system of bankrupt laws, *Rep. iv. 13.*—The general principle and object of this system is the equitable division of the insolvent trader's property amongst his creditors, *ib.*—The property being secured the bankrupt is left at liberty, provided he conform with the bankrupt laws, *ib. 14.*

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**Bannister, Eccles & Co. Messrs.** (Their Answers to Queries.)—Cotton spinners and manufacturers, Blackburn; inducements to arrest; doing away with that power without substituting some more expeditious way of preventing fraud would encourage rascality; voluntary cession should be allowed, *Rep. iv. App. 225 B.*

**Barber, Cattell & North, Messrs.** (Their Answers to Queries.)—Goldsmiths, York; diminution of credit would be the effect of abolishing arrest, which would be injurious to trade; all property should be available for debts, *Rep. iv. App. 211 B.*

**Barber, David.** (His Answers to Queries.)—Corn and flour merchant, Bolton-le-Moors; arrest is the common mode adopted in Lancashire; credit might be safely diminished; on what conditions voluntary cession should be allowed, *Rep. iv. App. 179 B.*

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**Barkworth & Spalding, Messrs.** (Their Answers to Queries.)—Timber merchants, Hull; circumstances by which the election to arrest is decided; by abolishing the power of arrest the credit of many persons would be annihilated; objections to the insolvent law, *Rep. iv. App. 246 B.*

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**Bassett & Grant, Messrs.** (Their Answers to Queries.)—Bankers of Leighton Buzzard; the right of arrest is liable to abuse, but is seldom so used; effect on credit of abolishing arrest; execution should extend to all property, *Rep. iv. App. 72 B. 73 B.*

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**Beaumont, William.** (His Answers to Queries.)—Of Warrington; inducements to arrest; table showing the results of various actions commenced by serviceable process; frauds by insolvent debtors; execution against property and person, *Rep. iv. App. 88 c.-91 c.*



**Beckett, Birks, & Co., Messrs.** (Their Answers to Queries.)—Bankers, Barnsley; causes of serviceable process being preferred to bailable; credit is given without the power of arrest being taken into account; terms on which voluntary cession should be allowed, *Rep. iv. App. 69 B.*

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**Beeching & Sons, Messrs.** (Their Answers to Queries.)—Bankers, Tonbridge; in what cases arrest is preferred to serviceable process; abolishing the power would further diminish credit; evils of the Insolvent Debtors' Court; terms under which voluntary cession should be allowed, *Rep. iv. App. 172 B.*

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In general it might be right that all costs should be paid by the losing party, but not universally so, *Rep. iv. App. 36 D. 145 D.*—Expense of bailable process as compared with that of serviceable process, *ib. 45 D. 125 D. 183 D. 187 D.*—Plaintiff's costs before declaration on bailable process, *ib. 51 D.*—The fear of incurring costs in defending actions on serviceable process will induce payment as much as arrest, *ib. 132 D.*—All reasonable costs should be allowed as between attorney and client, *ib. 138 D.*—If costs in actions are reduced, attornies should be better paid for confidential advice, *ib. 186 D.*

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## ii. King's Bench :

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## iii. Palace Court :

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If a decree of cessio bonorum be not granted, the costs remain in the discretion of the court, *Rep. iv. App. 79 D.*—In the event of a cessio, the creditor who has proceeded is not entitled to his costs out of the estate, but must come in pro rata with the others, *ib. 80 D.*—See also *Extra Costs. Insolvent Debtors' Court, 1. Security.*

*Cotton, Edward.* Of Birmingham ; letter from, suggesting that holders of dishonoured bills should be allowed to recover without action, *Rep. iv. App. 251 B.*

(Answers to Queries.)—The fear of arrest sometimes induces payment ; a diminution of credit would be a benefit to the commercial community ; evils of Insolvent Acts ; establishment of local courts recommended, *Rep. iv. App. 251 B. 252 B.*

*Coulston, John.* (His Answers to Queries.)—Manager of the Lancaster Banking Company ; reasons for adopting the process of arrest ; the power of obtaining subsequent bail desirable ; debtors in prison should be set to hard labour, *Rep. iv. App. 61 B.*

*Counties Palatine.* Returns of warrants on process issued out of the superior courts of the Counties Palatine, and of the results thereof, *Rep. iv. App. 2 F.—6 F.*

*Country Debtors.* Do not come up to London to take the benefit of the Act so frequently as they did formerly, *Rep. iv. App. 73 D.*—Nor do they come up to London to render, *ib. 74 D.*

*County Courts.* Returns of all process issued from county courts between 12 February 1830 and 12 February 1831, *Rep. iv. App. 1 I.—311 I.*

*Courts of Great Sessions.* Returns of warrants on process issued out of the Courts of Great Sessions, and of the results thereof, *Rep. iv. App. 1 G.—14 G.*

*Courts at Westminster.* Returns from sheriffs of counties, cities, and towns, of warrants issued out of the superior courts of common law at Westminster, and of the results thereof, *Rep. iv. App. 1 E.*—181 E.

*Cousins & Kemp, Messrs.* Tea dealers, London; extract from their evidence, to show that taking away the power of arrest before judgment would be exceedingly prejudicial to creditors, *Rep. iv. Paper by Mr. Stephen* 64, 65, 67—Answers to queries respecting the motives for arrest; its advantages; the power of subsequent bail would be to the interest of the creditor; insolvent laws are detrimental to the interest of creditors, *Rep. iv. App. 51 E.*

*Coventry, County of the Town.* Returns by the sheriff, of warrants issued out of the courts at Westminster, 12 February 1830 to 12 February 1831, and of the results thereof; and also of persons in custody, *Rep. iv. App. 14 E. 71 E. 95 E. 128 E. 142 E. 166 E.*—Returns of warrants issued from borough and other local courts, and also of prisoners in custody, *ib. 8 H. 43 H. 52 H. 61 H. 69 H.*—Returns of all process issued from borough and other local courts, *ib. 54 I.*

*Cowley, Lord.* Answers transmitted by Lord Cowley, as to the law of arrest and imprisonment for debt in Austria, *Rep. iv. App. 16 A.*

*Crawford, John.* Answers of John Crawford, consul at Baltimore, to queries circulated by the commissioners, on the law of imprisonment for debt in the State of Maryland, *Rep. iv. App. 15 A.*

#### CREDIT:

1. *General Effect of the Power of Arrest upon Credit.*
2. *How far Credit would be affected by doing away with the Power of Arrest.*
3. *Too great Facility with which Credit is given in this Country.*

##### 1. *General Effect of the Power of Arrest upon Credit:*

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## 3. Too great Facility with which Credit is given in this Country :

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**Credwson, Sons, & Co., Messrs.** (Their Answers to Queries.)—Bankers, Kendal; in what cases it is usual to arrest; subsequent arrest should be allowed; the Insolvent Debtors' Court is injurious to creditors; objection to voluntary cession, *Rep. iv. App. 212 B.*

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*Dales & Butterfield*, Messrs. (Their Answers to Queries.)—Druggists, York; reasons why it is expedient to arrest; fraudulent removal of goods should be considered as a crime; terms on which voluntary cession should be allowed, *Rep. iv. App. 168 B.*

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*Dance, Henry.* Provisional assignee of the Insolvent Court; creditors usually prefer arrest; the Insolvent Court is effective; property should be available to all creditors, *Rep. iv. App. 79 c.*

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*Darby, Richard, & Co.* (Their Answers to Queries.)—Coalbrooke Dale Company; diminution of credit would not produce mischief; fraudulent removal of goods deserves punishment; insolvent Acts are detrimental to the interest of creditors, *Rep. iv. App. 71 B.*

*Davenport & Co.* Messrs. Letter from Messrs. Davenport & Co. grocers, Hull, stating their views on arrest, and complaining of the facility of emigration at this port to avoid creditors, *Rep. iv. App. 48 B.*

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*Drummond, H. & J., jun., Messrs.* (Their Answers to Queries.)—Bankers; answers to queries on mesne process, showing that arrest produces hardship; facility of credit by tradesmen should be diminished; remarks on final process; where fraud has been practised, the debtor should be punished criminally, *Rep. iv. App. 2 B. 3 B.*

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## E.

*Eaton, Hammond & Son, Messrs.* (Their Answers to Queries.)—Bankers, Newmarket; arrest is a mere summary process; fraudulent removal of goods after judgment, or in contemplation thereof, should be punished; if the bankrupt laws were extended to all classes, the Insolvent Debtors' Acts would become unnecessary, *Rep. iv. App. 140 B.*

*Edman, Edward.* (His Answers to Queries.)—Of Lincoln; objects of proceeding by arrest; effect of that proceeding on credit; probable effect of its abolition on credit; to what extent fraudulent removal should be punished; under the insolvent laws fraudulent debtors have impunity, *Rep. iv. App. 243 B.*

*Edmondson & Co., Messrs.* (Their Answers to Queries.)—Grocers, Lancaster; advantages of arrest; objection to law charges; if the power of arrest be taken away, the facility of obtaining credit would not be materially diminished; the operation of the Insolvent Acts is detrimental to creditors, *Rep. iv. App. 26 B.—28 B.*

*Edwards, John.* (His Answers to Queries.)—Of Truro; proportion of serviceable over bailable process issued; period at which payment usually obtained; the power of arrest is not advantageous; execution against the body; evils of the Insolvent Act, *Rep. iv. App. 37 C. 38 C.*



*Elgin & Heseltine, Messrs.* Letter from Messrs. Elgin & Heseltine, druggists, York, to Lord Althorp, stating that London traders approve of the Insolvent Act, from the principle on which business is done in London being different from that in the country, *Rep. iv. App. 136 B.*—Answers by Messrs. Elgin & Co. to queries; advantages gained by arresting; fraudulent removal of goods before and after judgment should be punished as a crime; insolvent laws are detrimental to the interests of creditors; suggestions for an attachment against property, *ib. 136 B. 137 B.*

*Elliott, John.* (His Answers to Queries.)—Grocer and druggist, Liskeard; the power of arrest does not induce too easy credit; it does not operate as a check against incurring improvident debts; terms on which voluntary cession should be allowed, *Rep. iv. App. 175 B. 176 B.*

*Esdaile & Co. Messrs.* Bankers; answers to queries, showing that the power of arrest does not induce bankers or merchants to give credit; Insolvent Acts are detrimental to the interests of creditors, *Rep. iv. App. 3 B.*

*Essex.* Returns by the sheriff of the county of Essex, of warrants issued out of the courts at Westminster, 12 February 1830 to 12 February 1831, and of the results thereof, and also of persons in custody, *Rep. iv. App. 22 E. 74 E. 98 E. 128 E. 146 E. 166 E.*—Returns of warrants issued from borough and other local courts, and also of prisoners in custody, *ib. 12 H. 44 H. 53 H. 62 H. 70 H.*—Returns of all process issued from borough and other local courts, *ib. 94 I.*

*Evans, Thomas.* (His Answers to Queries.)—Of Denbigh; issue of bailable process; effect of the liability to arrest on credit; objection to arrest; attachment against goods; the insolvent laws are beneficial, *Rep. iv. App. 63 C.*

*Everard & Blencowe, Messrs.* (Their Answers to Queries.) Bankers, Lynn; inducements leading to arrest; a plaintiff having that power subsequently to commencing proceedings would be beneficial; the Insolvent Acts are useless to creditors, and are great corruptors of the public morals, *Rep. iv. App. 221 B. 222 B.*

*Everett, Edward.* Extract of a letter from Edward Everett, member of congress of Charlestown, Massachusetts, against the law of imprisonment for debt, *Rep. iv. App. 7 A.*

*Examination of Debtors (Scotland).* Debtors can only be examined before judgment on their affairs, in the event of their applying for aliment, or for a cessio, *Rep. iv. App. 83 D.*  
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*Exchequer, Court of.* Return of warrants on mesne process issued out of the Court of Common Pleas, and of the results thereof, 12 February 1830 to 12 February 1831, *Rep. iv. App. 2 E.-67 E.*—Return of persons in custody on 12 February 1830, on mesne process, and of the means by which they were discharged, *ib. 68 E.-91 E.*—Return of warrants on final process for damages, or damages and costs, &c. against the person, between 12 February 1830 and 12 February 1831, and of the results thereof, *ib. 92 E.-124 E.*—Return of persons in custody on 12 February 1830, on final process, and of the means by which they were discharged, *ib. 125 E.-137 E.*—Return of warrants on final process for damages, &c. against the goods, and of the results thereof, 12 February 1830 to 12 February 1831, *ib. 138 E.-165 E.*—Return of warrants on final process for damages, &c. against the lands during the same period, *ib. 166 E.-171 E.*—Returns of persons rendered in custody to the Fleet prison, *ib. 178 E.-181 E.*

#### EXECUTION :

1. *Generally.*
2. *Execution against the Body.*
3. *Execution against Property.*
4. *Opinion that Arrest in Execution is not unjust and harsh to the Debtor.*
5. *Inexpediency of doing away with the Power of Arrest in Execution.*
6. *Opinion that it should be abolished.*

##### 1. *Generally :*

With respect to arrest in execution, its effect was formerly to enable the party taking out execution to detain his adversary in prison at pleasure, so long as the debt should remain unpaid, *Rep. iv. Paper by Mr. Stephen 48*—The duration often lasted for many years, *ib.*—This rigour was in some measure qualified by the passing of occasional Acts for the liberation of imprisoned debtors, *ib.*—In the interval between these several Acts, a great number of persons were left to languish in prison for considerable periods, at the mercy of their creditors, *ib.*

What determines whether a *fi. fa.* or a *ca. sa.* shall be issued, *Rep. iv. App. 47 D.*—Few prisoners in Whitecross-street prison committed on mesne process remain sufficiently long to be charged in execution, *ib. 73 D.*—An arrest in execution may take place for

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for ever so small a sum, *Rep. iv. App. 83 D.*—Suggestion for sheriff's return of execution being entered on the roll, so as to avoid the necessity of reviving judgments, *ib. 160 D.*—Proportion out of 100 writs of *capias* in execution issued in Middlesex in which the defendant was not found, 1831, *ib. 190 D.*

Nature of the proceedings against the person of debtors in Scotland before and after judgment, *Rep. iv. App. 76 D., 77 D.*

**2. Execution against the Body:**

Arrest of the person with proper modifications, and for the mere purpose of recovering debt, is sanctioned by the almost universal practice of civilized countries, *Rep. iv. Paper by Mr. Stephen 49*—It very rarely produces payment; abolishing that power would be prejudicial to creditors, *Rep. iv. App. 4 D.*—It is not desirable to do away with execution against the body, *ib. 24 D.*—Execution against the body should be allowed to issue unless the debtor prevented it by making a voluntary cession of his property, *ib. 139 D.*

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Questions circulated by the commissioners as to whether, when judgment has been obtained, it is usual to proceed against the person until after process has been issued against the property in cases where there is property, *Rep. iv. App. 2 C.*—As to whether it is usual to proceed against the person where the creditor is unable to obtain payment of the debt from the debtor's property, *ib.*—Whether, where the debtor is not suspected of fraud in withdrawing or concealing his property so as to evade the creditor's execution, is it usual to issue process against the person, *ib.*—And also whether execution against the person is usually productive of payment to the creditor when the debtor fraudulently withdraws, or conceals, or assigns his property, *ib.*—Answers to these queries by the profession, *ib. 3 C. et seq.*

**3. Execution against Property:**

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Questions circulated by the commissioners, as to whether judgment being obtained against a debtor, it is usual or advantageous to issue execution against his person, unless process against his property has been resorted to in vain, *Rep. iv. App. 1 B.*—Whether, after having issued process against the property without effect, is it usual or advantageous to proceed against the body of the defendant, *ib.*—And also whether means can be suggested for rendering the process of execution against the property of debtors more available than it is at present, by extending its operations to debts, funded and other property, not now subject to such process, *ib.*—Answers to these queries by bankers, merchants, and others, *ib. 2 B. et seq.*

**4. Opinion that Arrest in Execution is not unjust and harsh to the Debtor:**

The opinion that imprisonment for debt is essentially unjust and contrary to the natural rights of man is not very prevalent, *Rep. iv. Paper by Mr. Stephen 49*—The general feeling is, that such imprisonment, in execution of a judgment, is not repugnant to natural justice, *ib.*—The sternness of the Roman maxim, *Qui non habet in are, luat in corpore*, is everywhere justly reprobated, *ib.*—Imprisonment in execution is not intrinsically unjust to the debtor, *ib. 50*—Whether it is expedient for the community is a different question, and one that must depend upon the degree in which it is important to the protection of the creditor, when compared with its attendant evils and inconveniences, *ib.*—That in the present state of the law it is both expedient and necessary is too clear to be disputed, *ib.*

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*Stephen 50*—The debtor, without property, will have no inducement to make those efforts by which he now often succeeds in obtaining the means of payment, *Rep. iv. Paper by Mr. Stephen 51*—The burthen and risk of realizing the property of the debtor will be constantly thrown upon the creditor, instead of being incumbent, as they ought to be, on the debtor himself, *ib.*

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*Exeter, City and County.* Returns by the sheriff of warrants issued out of the courts at Westminster, 12 February 1830 to 12 February 1831, and of the results thereof, and also of persons in custody, *Rep. iv. App. 22 E. 74 E. 101 E. 128 E. 146 E. 166 E.*—Returns of warrants issued from borough and other local courts, and also of prisoners in custody, *ib. 14 H. 44 H. 53 H. 62 H. 70 H.*—Returns of all process issued from borough and other local courts, *ib. 102 I.*

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*Extra Costs, Scotland.* Per centage of extra costs in Scotland, *Rep. iv. App. 170 D.*

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*Failure.* Few men recover themselves after arrest, imprisonment or failure, but on the contrary lose their proper feelings and acquire bad habits, *Rep. iv. App. 6 D.*

*Falcon, Robert.* (His Answer to Queries.)—Of Elm Court; reason why bailable process is resorted to; vexatious arrests; bail encourages litigation; modifications recommended; attachment against the goods; execution against the person; effects of the Insolvent Acts, *Rep. iv. App. 57 C. 59 C.*

*Families of Debtors.* Distress and destitution arising from the law of arrest, *Rep. iv. App. 122 D.*

*Farley & Co. Messrs.* (Their Answers to Queries.)—Bankers, Worcester; not usual to arrest where a debtor is solvent; debtor not followed to trial and execution if it can be avoided; voluntary cession should be allowed, *Rep. iv. App. 119 B.*

*Farr, J. C.* (Analysis of Evidence.)—Grocer in London; bailable process is not more effective than serviceable process; effect of abolishing arrest on credit, *Rep. iv. App. 40 D.*—Opinion in favour of voluntary cession; of a plan for compelling the discovery of property; of detaining absconding debtors, *ib. 41 D.*—Injury to tradesmen from credit given to debtors not in trade; *ib. 42 D.*—Difference between ready money and credit prices, *ib. 43 D.*

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*Fees.* All remanet, court, and record fees should be abolished, proper compensation being given, *Rep. iv. App. 189 D.*

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*Fell, Son, & Pearson, Messrs.* (Their Answers to Queries.)—Merchants, Ulverston; considerations inducing arrest; probable effect on credit of taking away that power; fraud in any shape should be punished as a crime; how far a voluntary cession might be advantageous, *Rep. iv. App. 156 B.*

*Females.* Great objection to females being arrested and locked up in spunging-houses, *Rep. iv. App. 148 D.*

*Fenton, James.* (His Answers to Queries.)—Of Leeds; arrest is usual with a view of compelling payment; abolishing that power would not improperly diminish credit; means should be devised for obtaining possession of debtors' property, *Rep. iv. App. 250 B.*

*Fernie, W. & J., Messrs.* Letter from Messrs. Fernie, bankers at Haddington, Scotland, stating the law of debt in Scotland; proceedings in *meditatione fugæ*, &c., *Rep. iv. App. 78 B. 79 B.*

Answers to queries by Messrs. Fernie; if arrest be done away with, attachment of the funds, real or personal, of the debtor should be given; fraudulent removal of goods should be punished as a crime; with security against fraud, cession should be allowed, *Rep. iv. App. 79 B. 80 B.*

*Fictitious Debts.* Parties concerned in bringing forward fictitious debts should be criminally punished, *Rep. iv. App. 39 D. 157 D.*

*Final Discharge.* There should be a law that unless a debtor paid a dividend within a certain time, he should not be entitled to his discharge, *Rep. iv. App. 20 B.*—A court should have the power of finally discharging a debtor's person and property if there were no fraud, *ib. 17 D.*—The Insolvent Court might have the power of granting a final discharge, with the consent of a certain number of creditors, *ib. 61 D.*—It would not be advantageous that debtors should obtain their final discharge from the Insolvent Court, *ib. 89 D.*

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*Final Process.* Consideration of the law of arrest and imprisonment upon final process, *Rep. iv. 7*—Changes which have already been made in this important branch of the law of arrest and imprisonment for debt adverted to by the commissioners, *ib. 35*—The law as formerly constituted was deficient in the following respects, *ib. 36*—First, in not enabling the creditor to obtain satisfaction by a direct process against the property of the debtor of every description, *ib.*—Secondly, in enabling a debtor to defraud his creditors by remaining in prison, *ib.*—Thirdly, in trusting to the creditor the power of perpetual imprisonment over a poor but honest debtor, *ib.*

Explanation of that branch of the law of arrest called final process or arrest in execution, *Rep. iv. Paper by Mr. Stephen 47*—Questions circulated by the commissioners among bankers, merchants, and others, on the subject of arrest on final process, *Rep. iv. App. 1 B.*—Answers thereto, *ib. 2 B. et seq.*—Questions circulated among the profession, *Rep. iv. App. 2 C.*—Their answers, *ib. 3 C. et seq.*

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*Firth, James.* Letter from James Firth, banker, of Northwich, stating that the power of arrest sometimes prevents debtors from being dishonest; the insolvent laws are a serious evil to the community, *Rep. iv. App. 161 B.*—Answers to queries by Mr. Firth; advantages of arrest; credit would be almost annihilated if arrest abolished; fraudulent removal of property should be considered criminal; all property should be liable to execution, *ib. 161 B.* 162 B.

*Firth, John.* (His Answers to Queries.)—Drysalter, Huddersfield; security a presumed advantage of arrest; the facility of obtaining credit would not be diminished by taking away the power of arrest; evils of the Insolvent Court to creditor, *Rep. iv. App. 214 B.* 216 B.

*Fisher, William.* (His Answers to Queries.)—Of Sheffield; arrest may compel payment by an able but unwilling debtor; if the facility of obtaining credit were to be diminished, it would not be productive of much inconvenience; evils of the Insolvent Acts; *Rep. iv. App. 256 B.*

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*Fixed Incomes.* Persons with fixed incomes, and not in trade, should be subject to examination, and if necessary, imprisonment, *Rep. iv. App. 180 D.*

*Fleet Prison.* Returns of persons rendered in custody in the Fleet Prison, between 12 February 1830 and 12 February 1831, *Rep. iv. App. 176 E.* 178 E.—Returns of persons in custody otherwise than in execution, on 12 February 1830, *ib.*—Returns of persons charged in execution between 12 February 1830 and 12 February 1831, *ib. 176 E.* 180 E.—Returns of persons in custody on execution on 12 February 1830, *ib. 178 E.* 180 E.

*Fletcher, Burd, & Wood, Messrs.* (Their Answers to Queries.)—Manufacturers, Manchester; arrest is usual where the creditor is put to defiance; objection to issue execution against the body; a voluntary cession would be advantageous, *Rep. iv. App. 162 B.*

*Flintshire.* Returns by the sheriff of Flintshire of warrants issued out of the courts at Westminster, 12 February 1830 to 12 February 1831, and of the results thereof, and also of persons in custody, *Rep. iv. App. 22 E.* 74 E. 101 E. 128 E. 146 E. 166 E.—Similar returns of warrants issued out of the Courts of Great Sessions, and of the results thereof, and of persons in custody, *ib. 4 G.* 7 G. 9 G. 10 G. 12 G. 14 G.—Returns of warrants issued from borough and other local courts, and also of prisoners in custody, *ib. 14 H.* 44 H. 54 H. 62 H. 70 H.—Returns of all process issued from borough and other local courts, *ib. 102 I.*

*Forder & Channell, Messrs.* (Their Answers to Queries.)—Merchants, Southampton; causes of arrest; the diminution of credit by abolishing arrest would be productive of much mischief and inconvenience; the Insolvent Act is the worst Act ever made, *Rep. iv. App. 131 B.*

*Foreign Countries.* The laws of other European nations, in the case of civil debts, are more favourable than the law of England to the liberty of the subject, but are yet found to be adequate to the purposes of justice, *Rep. iv. 32.*

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*Foreign Jurists.* Their opinions are in favour of arrest in execution, *Rep. iv. Paper by Mr. Stephen 56.*

*Foreigners.* They should not have the power of arrest, *Rep. iv. App. 108 D.*—Foreigners having property abroad should be subject to arrest here, *ib. 138 D.*

*Foster & Smithson, Messrs.* (Their Answers to Queries.)—Wholesale grocers, Blackburn; objects of arrest; effect of arrest on credit; the fraudulent removal of goods should be punished as a crime; the Insolvent Act is detrimental to the interests of creditors, *Rep. iv. App. 187 B.*

*Foster, Thomas.* (Analysis of his Evidence.)—Wholesale grocer and tea-dealer; reasons for proceeding by arrest; its effect; effect of serviceable process, *Rep. iv. App. 1 D.*—Probable effect on credit by doing away with arrest, *ib. 1 D.* 2 D.—Effect of execution against the body; evils of the Insolvent Acts, *ib. 2 D.*—Difficulty of proving fraudulent concealment,

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*Fosters & Co. Messrs.* (Their Answers to Queries.)—Merchants; many men who can pay will not till they are obliged; consequent use of arrest; every description of property should be liable to the debts of its possessor, *Rep. iv. App. 11 B. 13 B.*

*Fox, Messrs.* Letter from Messrs. Fox, bankers, Wellington, declining to answer queries, from want of the necessary experience, *Rep. iv. App. 122 B.*

*Fox & Co. Messrs.* Extract from the evidence of Messrs. Fox & Co., bankers, Plymouth, showing that taking away the power of arrest before judgment would give greater facility for absconding, *Rep. iv. Paper by Mr. Stephen 65*—Letter from Messrs. Fox, suggesting an attachment of goods instead of arrest, *Rep. iv. App. 100 B.*

Answers to Queries.—Arrest takes place with a view to security; credit is highly advantageous to trade in general; the fraudulent removal of goods should be severely punished; terms on which voluntary cession should be allowed, *Rep. iv. App. 100 B. 101 B.*

*Fox, G. R. W. & Co. Messrs.* (Their Answers to Queries.)—Merchants, Falmouth; apprehension of fraud induces arrest; credit would not be diminished to an injurious extent by abolishing that power; number and amount of creditors that should consent to a voluntary cession, *Rep. iv. App. 249 B.*

*France.* The power of arrest in execution exists in France, *Rep. iv. Paper by Mr. Stephen 55*—In France, and in some other countries, a distinction is recognised between commercial debts and debts purely civil, *ib.*—Arrest not being permitted in the latter instance, unless in certain specified cases, *ib.*—This distinction, though defended by Montesquieu (as applied to the old French law), and since maintained in the codes, does not easily commend itself to the understanding, *ib.*

In France the subject of imprisonment for debt has undergone much discussion, *Rep. iv. Paper by Mr. Stephen 56*—Though the power of arrest on judgments for commercial debt is still maintained, a strong feeling prevails against the justice and expediency of the principle, *ib.*—The question of arrest in execution takes a very different shape from that which it wears in England, *ib.*

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See also *Bills of Exchange, 3.*

*Francis, Turner, & West, Messrs.* Extract from the evidence of Messrs. Francis & Co., attorneys at Norwich, as to the expediency of a power of arrest, *Rep. iv. Paper by Mr. Stephen 68*—Statement by them that the greatest number of frauds are committed on debts under the amount of 50 l., *ib. 80.*

Answers to queries by Messrs. Francis & Co.; advantages sought by proceeding by arrest; in what stage of the suit debtors are most likely to pay on bailable and serviceable process; the greatest frauds are committed on debts of small amount; effects of the Insolvent Acts, *Rep. iv. App. 22 c. 23 c.*

#### FRAUD:

1. Generally.
2. Effect of the Law of Arrest and of the Insolvent Law in encouraging Fraud.
3. Degree of Punishment recommended in cases of Fraud.

##### 1. Generally:

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2. Effect

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In principle, the power of arrest ought to be confined to cases of actual or meditated fraud, *Rep. iv. 33*—The infliction of certain and severe penalties on such debtors as abscond or remove, conceal or aliene property in fraud of their creditors after the commencement of suit, recommended, *ib.*—One of the great objects of the insolvent law is to discriminate between the honest and the fraudulent, in order to the relief of the former and the punishment of the latter, *ib. 40*—If the bankrupt laws were judged of by their consequences, the conclusion would naturally be, that the omission to pay a debt afforded a stronger presumption of criminality than the most direct charge of fraud, *ib. 41*—It is essential that provision should be made for the more effectual punishment of dishonest and fraudulent debtors, *ib. 43*.

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**Funded Property.** It would be desirable that funded property should be liable to execution, *Rep. iv. App. 51 D.*—Funded property cannot be attached in Scotland, as the law of that country will not reach property in England, *ib. 78 D.*

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**Garnett, William.** Report from W. Garnett, vice-president and chairman of a committee of the Chamber of Commerce at Manchester, stating the necessity of giving facility to the recovery of debtors' property; the power of arrest does check improvident speculations; the Insolvent Debtors' Court is productive of much injury, *Rep. iv. App. 177 B.*

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**Gibbon, John.** (His Answers to Queries.)—Of Ashton-under-Lyne; serviceable process is to be preferred to bailable; friendly arrests; attachment of goods; property that should be liable to execution, *Rep. iv. App. 81 C.—83 C.*

**Gibbons, B.** (His Answers to Queries.)—Of Walbrook, London; reasons for preferring arrest; diminution of credit would be beneficial; fraudulent removal of goods should be punishable as a crime; every facility should be shown for voluntary cession, *Rep. iv. App. 207 B. 208 B.*

**Gibson & Wilson, Messrs.** (Their Answers to Queries.)—Bankers, Kirkby Lonsdale; in what cases arrests take place; the law is too much in favour of the debtor; majority of creditors that should free a debtor after making voluntary cession, *Rep. iv. App. 107 B.—109 B.*

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- Glynn, Halifax, Mills & Co., Messrs.** (Their Answers to Queries.)—Bankers; arrest is seldom used unless fraudulent intentions are suspected; arrest is sometimes productive of hardship; it operates as a check to incurring improvident debts; Insolvent Acts are detrimental to the interest of creditors, *Rep. iv. App. 7 B.*
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- Gray, Jonathan.** (His Answers to Queries.)—Of York; effect of bailable process; after plea, the suit is usually unproductive; evils of the Insolvent Act; the power of holding to bail is advantageous; observations upon execution against the body or goods, *Rep. iv. App. 34 C.*
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- Greg, Samuel & Co., Messrs.** (Their Answers to Queries.)—Of Manchester; arrest is more decisive and conclusive than serviceable process; this power does not facilitate the granting credit; objection to the Insolvent Acts; land should be made available for debts, *Rep. iv. App. 164 B.*
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**Hall, John.** (His Answers to Queries.)—Merchant; arrest brings the business to a speedy conclusion; how far the existence of the power may induce credit; Insolvent Acts are injurious to creditors; voluntary cession would be advantageous if acceded to by a certain majority of the creditors, *Rep. iv. App. 205 B.*

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**Hanbury & Co., Messrs.** (Their Answers to Queries.)—Bankers; are guided by the opinion of their solicitor in cases of enforcing arrest; a plan of attaching the personal property of debtors, by summary process, is desirable, *Rep. iv. App. 6 B.*

**Hankey & Co., Messrs.** (Their Answers to Queries.)—Bankers; arrest is used when milder means have failed; an arrest does not of itself injure the credit of the man otherwise entitled to confidence; Insolvent Acts seem framed to foster frauds on creditors, *Rep. iv. App. 5 B. 6 B.*

**Hanse Towns.** Answers to queries transmitted by the commissioners, to ambassadors, &c., containing information on the law of arrest in the Hanse Towns, *Rep. iv. App. 25 A.*

**Hansell, Francis.** (His Answers to Queries.)—Retail dealer, Thirsk; security is one of the advantages obtained by arrest; other effects of that proceeding; effect of arrest on credit; execution should extend to every species of property, *Rep. iv. App. 218 B.-220 B.*

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**Harding, Smith & Stansfield, Messrs.** (Their Answers to Queries.)—Bankers, Burlington; inducements to arrest. The diminution of credit would be a great evil to the lower order of tradesmen and farmers; the power of holding to bail in a subsequent stage of proceedings should be given; objection to a voluntary cession, *Rep. iv. App. 46 B. 47 B.*

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**Hardy, Messrs. G. & Co.** (Their Answers to Queries.)—Merchants; arrest is useful in cases of fraud or intended flight; an Act for the speedy and cheap recovery of small debts is wanted; Insolvent Acts are detrimental to the fair trader, *Rep. iv. App. 34 B. 35 B.*

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**Harley & Long, Messrs.** (Their Answers to Queries.)—Wholesale ironmongers, &c. Bristol; arrest excites activity in a sluggish debtor; credit would not be materially diminished by abolishing arrest; on what grounds subsequent arrest should be allowed; suggestions for amending the law of debtor and creditor, *Rep. iv. App. 159 B. 160 B.*

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**Harrop & Vaudrey, Messrs.** (Their Answers to Queries.)—Of Stockport; reasons for preferring arrest to serviceable process; usual period of settlement of debt under both descriptions of process; friendly arrests; frauds under the Insolvent Act, *Rep. iv. App. 96 C.*

**Hartland & Co., Messrs.** (Their Answers to Queries.)—Bankers, Evesham; advantages of arrest in cases of forgery; a more summary and less expensive mode of obtaining debts would be advantageous; voluntary cession should depend on the agreement of a proportion of the creditors and the amount of the dividend, *Rep. iv. App. 22 B. 23 B.*

**Hartley, John.** Letter from Mr. John Hartley, merchant, Leeds, enclosing answers to queries, stating cases in which arrest is to be preferred; objections to doing away with the law of arrest; number of creditors that should consent to a voluntary cession, *Rep. iv. App. 91 B. 93 B.*—Proposals for establishing county courts, *ib. 94 B.*

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*Hedley, Chapman & Co., Messrs.* (Their Answers to Queries.)—Bankers, Newcastle; causes which operate in inducing arrest; probable effect on credit of abolishing that power; fraudulent removal of goods should be punished as a crime; objection to voluntary cession, *Rep. iv. App. 134 B.*

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*Helps, Thomas.* Letter from Mr. Helps, inclosing resolutions, signed by 62 firms in London, in favour of a bill to facilitate the operation of trust deeds, *Rep. iv. App. 37 B.*

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*Hicks, Baylis & Cooke, Messrs.* (Their Answers to Queries.)—Wholesale grocers; in what cases arrest is useful; the plaintiff ought to have the power of holding to bail in a subsequent stage of the proceedings; Insolvent Acts are injurious to the morals of the country, *Rep. iv. App. 19 B. 20 B.*

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*Hindmarsh, T.* (Analysis of his Evidence.)—A solicitor, *Rep. iv. App. 159 D.*—Statements showing that serviceable process is much more efficacious than bailable process in procuring payment, *ib. 159 D. 160 D.*—Sheriff's return to executions should be continued on the roll instead of judgments being revived; instance of an escape from prison through fraud and forgery, *ib. 160 D.*

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*Hobhouse, Phillott & Co., Messrs.* Letter from Messrs. Hobhouse & Co., bankers, Bath, suggesting a different administration of the bankrupt laws; and extending those laws to all classes, *Rep. i. App. 166 B.*

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*Hodge & Norman, Messrs.* (Their Answers to Queries).—Bankers, Devonport; arrest sometimes induces immediate payment; abolishing the power would diminish credit, which would produce mischief and inconvenience; the option of taking the body in execution may in some cases be advantageous, *Rep. iv. App. 247 B.*

*Hodgson, P. W.* (His Answers to Queries).—Of Whitehaven; circumstances which decide the description of process that is to issue against a debtor; the suit is generally unproductive after the plea; vexatious arrests; bail is productive of perjury; arrest should be abolished; remarks on execution against the body; evils of the Insolvent Debtors' Court, *Rep. iv. App. 36 c. 37 c.*

*Holdsworth J. & W. H., Messrs.* (Their Answers to Queries).—Merchants, Hull; inducements to arrest; credit cannot be abolished; it is checked by proper precautions; if the process of arrest be taken away a speedier and cheaper means of recovery should be given; under what powers voluntary cession should be allowed, *Rep. iv. App. 148 B.*

*Holmes, William.* (His Answers to Queries). Grocer, Newcastle-upon-Tyne; cases where arrest is necessary; in cases of suspected fraud, the debtor should be held to bail during process; the law of debtor and creditor should be more nearly assimilated to that of landlord and tenant, *Rep. iv. App. 32 B. 33 B.*

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*Hopwood & Son, Messrs.* (Their Answers to Queries).—Merchants, Blackburn; arrest is more likely to produce an early arrangement than serviceable process; inconvenience would not arise from the diminution of credit; all descriptions of property should be available to creditors, *Rep. iv. App. 213 B.*

*Houses and Land.* The court should have the power of compelling an insolvent to give his assignee possession, which it has not at present, *Rep. iv. App. 103 D.*

*Howard, Mr.* (His Answers to Queries).—Of Portsea;ailable suits are not productive after plea; modifications suggested in the law of arrest; either arrest or distringas is necessary; all property should be available to creditors, *Rep. iv. App. 30 c.*

*Howards & Harrison, Messrs.* (Their Answers to Queries).—Of Preston; proportion of serviceable andailable writs issued; when payment is most usually made; advantages of the power of arrest; attachment against property recommended as an additional remedy; execution against the body, *Rep. iv. App. 27 c.-29 c.*

Extracts from the evidence of Messrs. Howards & Harrison, in favour of arrest before judgment, *Rep. iv. Paper by Mr. Stephen 72*—And also against the substitution of attachment of goods for arrest, *ib. 86.*

*Hulke & Son, Messrs.* (Their Answers to Queries).—Bankers, Deal; suspicious debtors are arrested; in some cases plaintiffs should be allowed the discretion of subsequent bail; the Insolvent Act screens the rogue, *Rep. iv. App. 105 B.*

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*Hull, County of the Town of.* Returns by the sheriff of warrants issued out of the courts at Westminster, 12 February 1830 to 12 February 1831, and of the results thereof, and also of persons in custody, *Rep. iv. App. 30 E. 77 E. 104 E. 130 E. 150 E. 168 E.*—Returns of warrants issued from borough and other courts, and also of prisoners in custody, *ib. 18 H. 45 H. 55 H. 63 H. 72 H.*—Return of all process issued from borough and other courts, *Rep. iv. App. 126 I. 306 I.*

*Hull, Smith & Co.* (Their Answers to Queries.)—Bankers, Uxbridge; in what cases it is usual to enforce the process of arrest; there are few cases where the facility of obtaining credit would be diminished if the right of arrest were taken away; voluntary cession should be allowed on certain terms, *Rep. iv. App. 145 B.*

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*Hundred Courts.* Returns of all process issued from hundred courts between 12 February 1830 and 12 February 1831, *Rep. iv. App. 1 I. 311 I.*

*Hunt & Sons, Messrs.* (Their Answers to Queries.)—Attornies, Stourbridge; reasons why bailable process is preferred to serviceable process; recourse had to the Insolvent Act for fraudulent purposes; alteration or modification in the law of arrest objected to; circumstances under which it is usual to issue execution against the body, *Rep. iv. App. 19 C.—21 C.*

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*Huntingdonshire.* Returns of warrants issued from borough and other local courts, and also of prisoners in custody, *Rep. iv. App. 18 H. 45 H. 55 H. 63 H. 72 H.*—Returns of all process issued from borough and other local courts, *ib. 130 I.*

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## IMPRISONMENT FOR DEBT:

1. Generally.
2. Evils of Imprisonment for Debt.
3. Inexpediency of abolishing the System.
4. Plan of Imprisonment and Hard Labour proposed.
5. State of the Law in Scotland.
6. Public Opinion in America on the Subject.

## 1. Generally:

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**Indorsees (Scotland).** Regulations for recovery of debts from other parties by indorsees, who have paid a promissory note, *Rep.* iv. *App.* 81 D.

**Insolvency and Bankruptcy.** The power of arrest, so far from being a harmless and proper test for ascertaining the fact, is not unfrequently the cause of insolvency, *Rep.* iv. 17 —In America insolvency is beginning to be considered a misfortune, and not a crime as heretofore, *Rep.* iv. *App.* 4 A.—It should be clearly laid down what should entitle creditors to declare a man insolvent, *ib.* 17 D.—Suggestions for a board, presided over by a barrister, before which insolvents should appear and meet their creditors, *ib.* 17 D. 18 D.—Evils of there being one law for the poor and another for the comparatively rich, *ib.* 99 D.—Where the estate is large enough, the property is managed under a commission, and the Insolvent Court appears to have discharged a man from immense debts without any dividend, *ib.*

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INSOLVENT

## INSOLVENT ACTS :

1. *Working of the Present Acts.*
2. *Amendments in the Law suggested.*
3. *Answers to Questions circulated by the Commissioners.*

1. *Working of the Present Acts:*

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## INSOLVENT DEBTORS' COURT:

1. *Course of Practice of the Court; Costs, &c.*
2. *Inefficiency of the Court; Respects in which it is inoperative, and Causes thereof.*
3. *Questions circulated by the Commissioners, with Answers thereto.*
4. *Papers laid before the Commissioners.*

1. *Course of Practice of the Court; Costs, &c. :*

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Questions proposed by the commissioners, 1st, As to whether it is usual or advantageous to pursue the debtor into the Insolvent Court, when he seeks to take the benefit of the Insolvent Acts, *Rep. iv. App. 1 B.*—Answers thereto by bankers, merchants, and others, *ib. 3 B. 275 B.*—2d, Whether the Insolvent Court is effective for enforcing a fair distribution of the insolvent's property, or in what respects the proceedings are defective, *ib. 1 C.*—Answers thereto by the profession, *ib. 3 C. 123 C.*

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INSOLVENT

## INSOLVENT LAW :

1. *General Principles and Objects of the Insolvent Law.*
2. *Defective Principles on which the existing Law is based.*

1. *General Principles and Objects of the Insolvent Law :*

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## JUDGMENT (MESNE PROCESS):

1. *Inquiry into the Origin of Arrest before Judgment; Countries in which the Practice obtains.*

2. *Evils that would result from its Abolition.*

1. *Inquiry into the Origin of Arrest before Judgment; Countries in which the Practice obtains:*

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Thirdly,

## JUDGMENT (MESNE PROCESS)—continued.

2. *Evils that would result from its abolition*—continued.

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#### MESNE PROCESS:

1. *Explanation of the Practice of Arrest on Mesne Process.*
2. *How far the Practice of Arrest on Mesne Process may be considered advantageous.*
3. *Modifications necessary in the Practice.*
4. *Answers to Queries circulated by the Commissioners on the subject of Mesne Process.*
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**Prohibitory Diligence** (Scotland). Nature of a preventive or prohibitory diligence, *Rep. iv. App. 77 D.*

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**Proof of Debts.** In bankruptcy, all debts are proved before certificate; in insolvency, not till the declaration of dividend, *Rep. iv. App. 89 D.*

#### PROPERTY

## PROPERTY OF DEBTORS :

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2. *Recommendations that Debtors should be summoned before a Court to discover their Effects.*
3. *Objections to such a Course being pursued.*
4. *Opinions that all kinds of Property should be liable for Debts.*
5. *Whether Property acquired by Insolvents subsequent to their Discharge by the Court, should be liable for their former Debts.*
6. *Proceedings against the Property of Debtors in Scotland.*
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1. *Difficulty found by Creditors in getting at the Property of Debtors ; Suggestions for remedying the Evil :*

Great advantage would arise if a debtor's property could be got at, and his accounts be investigated, before his estate goes to ruin, *Rep. iv. App. 3 D. 4 D.*—Difficulty creditors have in availing themselves of property subsequently acquired after discharge under the Insolvent Act, *ib. 4 D.*—Obtaining the debtor's property is the main object that creditors have in view, *ib. 25 D.*—Reason why creditors are averse to making inquiries into insolvent's property ; inquiries made by the court thereinto, *ib. 91 D.*—Difficulties in the way of attachment on property, *ib. 115 D.*—Execution against goods is very seldom issued out of the Southwark Court of Requests, *ib. 116 D.*—Effect of issuing executions against property, *ib. 122 D.*—If after certain acts of insolvency a debtor's property could be made available to his creditors, it would be better than arrest, *ib. 177 D. 178 D. 180 D.*

It would be desirable to render property and beneficial interests of every description belonging to debtors more accessible to the claims of judgment creditors, *Rep. iv. App. 17 D.*—It would be a great benefit if the law of arrest were to be done away with, and a more summary mode obtained of getting at property, *ib. 20 D.*—Means should be devised of getting at stock, and other property, in execution, *ib. 54 D.*—In cases where there is large property, a cession is not resorted to, *ib. 80 D.*—Advantages and disadvantages of a proposed plan of giving the Insolvent Court a compulsory power of obliging a debtor to surrender his estate, *ib. 93 D.*—Attachment on goods would not be so advantageous as arrest *ib. 104 D. 105 D.*—If creditors could be secured the means of getting a distribution of all the debtor's property, arrest on mesne and final process might be dispensed with, *ib. 160 D.*

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Plan for compelling a debtor to discover his property on oath after final judgment, and make assignment thereof for the benefit of his creditors, *Rep. iv. App. 29 D.*—After judgment, debtors should be summoned before a court to discover their effects, *ib. 36 D. 38 D. 41 D. 141 D. 142 D. 144 D. 156 D. 185 D.*—Mode adopted in the Insolvent Debtors' Court of compelling a debtor to discover his property, *ib. 88 D.*—Means should be devised for examining a debtor after judgment as to the property he had when the suit was instituted, *ib. 136 D. 137 D.*—After judgment there should be a power of examining debtors as to their property, with a view to distribution, *ib. 189 D.*

3. *Objections to such a Course being pursued :*

A power to compel a defendant to disclose his property might be useful, but would lead to perjury, *Rep. iv. App. 47 D.*—Objection to compelling a debtor to discover his property after judgment obtained against him, *ib. 170 D.*

4. *Opinions that all kinds of Property should be liable for Debts :*

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**PROPERTY OF DEBTORS**—continued.**5. Whether Property acquired by Insolvents subsequent to their Discharge by the Court, should be liable for their former Debts :**

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**6. Proceedings against the Property of Debtors in Scotland :**

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**7. Questions circulated by the Commissioners on the subject of the Property of Debtors :**

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See also Attachment of Goods. Cession of Property. Compulsory Surrender of Property. Execution, 3. Fraud. Fraudulent Concealment. Funded Property. Half Pay. Houses and Land. Insolvent Acts, 1. Insolvent Law, 1. Landed Property. Real Property. Removal of Property. Salaries. Securities. Trades. Trust Money. United States. Voluntary Cession.

**Prussia.** The power of arrest in execution exists in Prussia, *Rep. iv. Paper by Mr. Stephen 55*—Answers to questions circulated by the commissioners on the state of the law of arrest and imprisonment for debt in Prussia, *Rep. iv. App. 31 A.*

**Public, The.** As far as the public is concerned, the practice of arrest operates to the oppression of many, and the insecurity of all, *Rep. iv. 25.*

**Punishment.** See *Imprisonment for Debt, 4.*

**Pye, Son & Co., Messrs.** (Their Answers to Queries.)—Wholesale and retail dealers, Exeter ; inducements to prefer arrest to serviceable process ; cases may occur in which a subsequent power of arrest may be desirable ; all property should be subject to debts, *Rep. iv. App. 228 B.*

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**Radnor.** Returns by the sheriff of Radnorshire of warrants issued out of the courts at Westminster 12 February 1830 to 12 February 1831, and of the results thereof, and also of persons in custody, *Rep. iv. App. 50 E. 83 E. 116 E. 134 E. 158 E. 170 E.*—Similar returns of warrants issued out of the Courts of Great Sessions, and of the results thereof, and of persons in custody, *ib. 6 G. 7 G. 9 G. 10 G. 13 G. 14 G.*—Returns of warrants issued from borough and other local courts, and also of prisoners in custody, *ib. 30 H. 48 H. 57 H. 65 H. 75 H.*—Returns of all process issued from borough and other local courts, *ib. 234 I.*

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**Rae, Sir William.** Letter from, to Joseph Hume, M.P. enclosing memorandum on the subject of arrest, *Rep. iv. App. 164 D.*

**Rawlinson, Thomas.** (His Answers to Queries.)—Wholesale dealer, Snow-hill; better security is obtained by arrest; the liability operates as a caution against improvident credit; it is desirable to hold to bail in any stage of the proceedings; terms on which voluntary cession should operate as a discharge, *Rep. iv. App. 269 D. 270 B.*

(Analysis of his Evidence.)—Wholesale tea-dealer, Snow-hill; advantages of arrest, *Rep. iv. App. 32 D. 34 D.*—Concurrent power of arrest and seizure of property should be given, *ib. 32 D. 33 D.*—Voluntary cession should entitle to a free discharge, *ib. 33 D.*—Arrestable amount should be reduced, *ib. 34 D.*—Effects of bailable and serviceable process compared; interest should be allowed, *ib. 35 D.*—Discovery of property to be compelled; punishment for fraudulent concealment; for non-payment by instalments; detention for supposed absconding, *ib. 36 D.*

**Rawson & Co., Messrs.** (Their Answers to Queries.)—Bankers, Huddersfield; inducements for arresting debtors; subsequent bail should be allowed; execution should extend to all kinds of property, *Rep. iv. App. 76 B.*

**Rawson, James.** Letter from James Rawson, of Halifax, stating that a prompt mode of attaching property would be desirable, *Rep. iv. App. 176 B.*

(Answers to Queries.)—Arrest is the shortest course; objection to the diminution of credit which would be occasioned by abolishing arrest; the fraudulent removal of goods should be punished severely, *Rep. iv. App. 177 B.*

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**Renders.** Return of the number of renders in discharge of bail in the King's Bench, Common Pleas, and Exchequer, between 12 February 1830–1831, *Rep. iv. 90.*

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**Reynolds, Henry Revell.** (Analysis of his Evidence.)—Chief commissioner of Insolvent Debtors' Court; operation of the Insolvent Act on the debtor; expense of proceeding; mode of obtaining a discovery of property, *Rep. iv. App. 88 D.*—Advantages of future property being liable, *ib. 89 D. 90 D.*—Objection to abolishing arrest on mesne process, *ib. 90 D.*—Inquiry into and mode of punishing fraud, *ib. 91 D. 92 D.*—Creditors should not be allowed to possess themselves of subsequent property for their individual benefit, *ib. 92 D. 93 D.*—The court should not be allowed a power of compelling a debtor to surrender his property, *ib. 93 D.*—Proceedings and practice of the court in town and country cases *ib. 94 D. 95 D.*—Opinion upon friendly arrests, *ib. 95 D.*—The Act has not operated to the disadvantage of creditors, *ib. 95 D. 96 D.*

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**Richards, Henry Charles.** (Analysis of his Evidence.)—Master of the Insolvent Debtors' Court; amount of costs in town and country cases; difficulty of ascertaining dividends; judgments in warrants of attorney are entered up, *Rep. iv. App. 74 D.*—Estates are more productive than formerly; they would be better but for the necessity of actual custody; a compulsory power to oblige debtors to take the benefit of the Act would be beneficial, *ib. 75 D.*

**Ridley, Bigge, Gibson & Co. Messrs.** (Their Answers to Queries.)—Bankers, Newcastle; cases in which arrest is advantageous; fraudulent removal of goods should be punished criminally; terms on which voluntary cession should be allowed, *Rep. iv. App. 62 B.*

**Ridgard, William.** Of Allerton, near Liverpool; letter from Mr. Ridgard, showing a case of hardship to creditors through claims under a marriage settlement, *Rep. iv. App. 234 A.*

(Answers to Queries.)—The right to arrest does not influence credit; nor does that liability prevent the incurring improvident debts; the fraudulent removal of goods should be criminal; a voluntary cession would be advantageous, *Rep. iv. App. 235 B.*

**Rishton, Edward.** (His Answers to Queries.)—Of Preston; cases in which arrest takes place; extortions by sheriffs' officers; evils of the Insolvent Court; friendly arrests; attachment of goods; execution against the body, *Rep. iv. App. 29 C. 30 C.*

**Roberts & Carter, Messrs.** (Their Answers to Queries.)—Of Barnstaple; serviceable process is much more frequently issued than bailable process; extortions by sheriffs' officers; attachment of goods; punishment for fraudulent removal; execution against the person; demoralizing effect of the insolvent laws, *Rep. iv. App. 56 C. 57 C.*

**Robinson, James.** Extract from the evidence of James Robinson, banker, Chesterfield, as to the expediency of a power of arrest, *Rep. iv. Paper by Mr. Stephen 67.*

(Answers to Queries.)—Inducements to arrest; effect on credit of removing the power of arrest; voluntary cession would be an inducement to fraud, *Rep. iv. App. 65 B. 66 B.*

**Robson, John.** (His Answers to Queries.)—Wholesale and retail dealer, Sunderland; advantages gained by arrest; a removal of goods fraudulently should be subject to criminal punishment; majority of creditors who should consent to a voluntary cession, *Rep. iv. App. 124 B.*

**Roebuck, Stow & Taylor, Messrs.** (Their Answers to Queries.)—Wholesale grocers, St. Mary-at-Hill; considerations on which the election to arrest is founded; abolishing arrest might not affect credit, though it might the creditors' interest in the recovery of the debt; funded property and debts should be liable to execution, *Rep. iv. App. 217 A.*

**Rogers, Towgood & Co., Messrs.** Extract from their evidence, stating that a fear of disgrace and expense induces a more prompt payment by an arrest than by serviceable process, *Rep. iv. Paper by Mr. Stephen 69.*

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**Rogers, T.** (His Answers to Queries.)—Draper, Leicester; arrest tends to immediate settlement; if arrest were abolished credit would not be so easily given to young persons entering business; voluntary cession would be advantageous, *Rep. iv. App. 131 B.*

**Rosevear & Sloggatt, Messrs.** (Their Answers to Queries.)—Merchants, Boscawen; expedition is a great inducement to arrest; discretionary power of subsequently holding to bail would be desirable; all property should be rendered available to debts, *Rep. iv. App. 224 B.*

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**Rothwell, Hick & Rothwell, Messrs.** (Their Answers to Queries.)—Iron-founders, Bolton; fear of the debtor's absconding would cause an arrest; that power should be given in a subsequent stage after serviceable process; Insolvent Acts are injurious to the interests of creditors, *Rep. iv. App. 176 B.*

**Round, Green & Co., Messrs.** (Their Answers to Queries.)—Bankers, Colchester; causes influencing arrest; fraudulent removal of goods should be punished; Insolvent Acts are detrimental to creditors, *Rep. iv. App. 81 B.*

**Round, John.** (His Answers to Queries.)—Wholesale dealer, Old Brentford; causes of proceeding to arrest; diminution of credit would be advantageous; fraudulent removal should be criminally punished; great demoralization caused by the Insolvent Acts, *Rep. iv. App. 270 B.*

**Rowntree, John.** Extract from the evidence of Mr. John Rowntree, grocer, Scarborough, showing that taking away the power of arrest before judgment would be prejudicial to creditors, *Rep. iv. Paper by Mr. Stephen 64.*

(Answers by Mr. Rowntree to Queries circulated by the Commissioners.)—Arrests occur from creditors being irritated, or hoping that the pride or sympathy of debtor's friends may induce payment; it would be difficult to guard against fraud in cases of voluntary cession, *Rep. iv. App. 43 B. 44 B.*

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**Rumball, S. A.** (Analysis of his Evidence.)—Various objections to arrest; it should be abolished, *Rep. iv. App. 143 D. 144 D.*—Vexatious arrests; execution against the body should not be done away with till all property is made available, *ib. 144 D.*—Plan for voluntary and compulsory cession, *ib. 144 D. 145 D.*—Interest and all costs should be allowed; summary proceedings on bills, notes, &c. recommended, *ib. 145 D.*

**Russell, Joseph.** Extract from the evidence of Mr. Joseph Russell, merchant of Bristol, in favour of arrest before judgment, *Rep. iv. Paper by Mr. Stephen 71.*

(Answers to Queries.)—Arrest sometimes produces immediate arrangement; the power of arrest does not induce credit; bail should be liable to payment absolutely; all property should be subject to debts, *Rep. iv. App. 123 B.*

**Rutland.** Returns by the sheriff of Rutland of warrants issued out of the courts at Westminster, 12 February 1830 to 12 February 1831, and of the results thereof, and also of persons in custody, *Rep. iv. App. 50 E. 86 E. 116 E. 134 E. 158 E. 170 E.*—Returns of warrants issued from borough and other local courts, and also of prisoners in custody, *ib. 30 H. 48 H. 58 H. 65 H. 75 H.*—Returns of all process issued from borough and other local courts, *ib. 234 I.*

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**Sales in Execution.** Losses that take place upon the sale of goods in execution, *Rep. iv. App. 123 D.*—Proceedings regarding the sale of property after judgment in Scotland, *Rep. iv. App. 77 D.*

**Salkeld, George.** Answers to queries by George Salkeld, esq. of New Orleans, on the law of imprisonment for debt, and liability of property in Louisiana, *Rep. iv. App. 9 A.*

**Sanders, Joseph.** (His Answers to Queries.)—Merchant, Whitby; arrest is preferable to serviceable process; the fraudulent removal of goods should be punishable; insolvent laws are detrimental to morals, *Rep. iv. App. 36 B. 37 B.*

**Sandys, H., Junior.** (His Answers to Queries.)—Expediency of arrest; its abuses pointed out; remedies suggested; opinion as to serviceable process; execution; abuses of the Insolvent Act; remedies proposed, *Rep. iv. App. 125 C.*

**Sankey, R. & C., Messrs.** (Their Answers to Queries.)—Bankers, Denbigh; circumstances which induce arrest; how far that power acts as a check against the improvident contraction of debts; voluntary cession would be advantageous, *Rep. iv. App. 209 B.*

**Sattherthwaite, S. & W.** (Their Answers to Queries.)—Grocers, Lancaster; the debtor's property is to be preferred to his person; arrest is productive of great hardship where the debtor is solvent; all property should be liable to execution, *Rep. iv. App. 44 B. 45 B.*

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*Scholey, Robert.* (His Answers to Queries.)—Bookseller; reasons for preferring arrest to serviceable process; credit would be diminished by taking away the power of arrest; Insolvent Acts are detrimental to the interest of creditors, *Rep. iv. App. 16 B.*

*Scotland.* The practice of arrest before judgment prevails in Scotland, in actions upon bills of exchange, promissory notes, and other written engagements for the payment of money, *Rep. iv. Paper by Mr. Stephen 62*—In Scotland, where the process of attachment is much wanted, it will be found to issue even without affidavit of debt, a laxity which in England would scarcely be tolerated, *ib. 82*—State of the law of debtor and creditor in Scotland; its advantages over the law of England, *Rep. iv. App. 145 D., 146 D.*

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*Security.* Security should be given to pay debt and costs, instead of giving bail to an arrest, *Rep. iv. App. 6 D.*—If actions were placed upon a footing as suggested, the plaintiff might be required to give security for costs and damages, and the defendant for debt and costs, *ib. 7 D.*—Nature and effect of the security required, on loosing inhibitions in Scotland, *Rep. iv. App. 78 D.*

*Seddon, W.* (His Answers to Queries.)—Lace manufacturer, Leicester; causes of arrest being preferred to serviceable process; a knowledge of the power of arrest prevents the necessity of using it; terms on which voluntary cession should be allowed, *Rep. iv. App. 125 B.*

*Sedgwick, Charles.* Extract of a letter from Charles Sedgwick, esquire, of Lenox, Massachusetts, containing statements and calculations as to imprisonment for debt, showing it to be useless and expensive, *Rep. iv. App. 8 A.*

*Sequestration (Scotland).* Difference between sequestration and bankruptcy in Scotland, *Rep. iv. App. 168 D., 169 D.*

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#### SERVICEABLE PROCESS:

1. *Nature of Serviceable Process.*
2. *Whether delay is created by this mode of Proceeding.*
3. *Remarks of the Commissioners generally on the subject.*

##### 1. *Nature of Serviceable Process:*

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2. *Whether Delay is created by this Mode of Proceeding :*

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3. *Remarks of the Commissioners generally on the subject :*

It appears from official returns that out of 431,396 writs issued from the superior courts in five successive years, 174,495 only were bailable, leaving 256,901 for serviceable, *Rep. iv. 12*—On an average taken from 256,901 actions commenced by serviceable process, nearly one-half were settled on service without any appearance entered, *ib.*—Many who are of opinion that it is more advantageous in general to proceed by arrest than by serviceable process, state that it is much more frequent to proceed by arrest, and that the latter proceeding is more efficacious than serviceable process in procuring payment, *ib.*—An arrest will, in some doubtful or desperate cases, produce payment, where serviceable process would not, *ib. 12, 13.*

It is said to be demonstrable, from certain tables annexed to the First Common Law Report, and to the present Report, that payment is more frequently obtained upon serviceable than upon bailable process, *Rep. iv. Paper by Mr. Stephen 73*—The deduction drawn from the tables, however, relates only to the comparative powers of the two modes of process, supposing both to be actually put in force, *ib.*—In a considerable number of cases, in which serviceable process is adopted, the claim is of small amount, *ib.*—While the writ is threatened or expected, and may be arrested by payment, its terror is in full operation on the debtor's mind; it is at that period that good may be expected from the process, *ib.*—The opinion entertained of the superior efficacy of bailable process must therefore be erroneous, *ib.*

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**Appearance.** Objection to the want of sufficient and simple process to compel an appearance in the inferior courts, *Rep. v. 5*—In the county court the payment of appearance money authorizes an appearance to be entered for the defendant; a declaration is filed, an appearance is entered at the foot, and in default of plea the plaintiff is entitled to judgment, *ib. 8*—Objectionable nature of these proceedings, *ib. 8, 9*—Amount of appearance money by justices and common plaint, *ib. 8*.

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**Appearance Money.** See *Appearance. Sale of Goods.*

**Appointment of Judges.** See *Judges, 2, 4.*

**Armstrong, R. B.** Attorney of Staple's-Inn; letter from, showing the necessity of revising the form and costs of writs of justices, *Rep. v. App. 33 A.*

**Armstrong, Robert Baynes.** (Analysis of his Evidence.)—A barrister; jurisdiction of inferior courts might be extended, *Rep. v. App. 28 B.*—Why suitors are supposed to prefer trying their causes at the assizes to the Lancashire County Court; in what cases local courts are preferred, *ib. 29 B.*—Appeals on matters of law would be expensive; local assessors should be appointed for county courts; advantages that would result from the appointment of local judges, *ib. 30 B.*—Professional assistance should be allowed in small matters if paid for by the party requiring it; one court would be desirable if it could be made efficient, *ib. 31 B.*—Objection to a proposed plan of trying causes upon affidavit, *ib. 32 B.*

**Arnott, James.** (His Answers to Queries.)—Of Newcastle-upon-Tyne; in favour of continuing the present courts as amended, to establishing one court of general jurisdiction, *Rep. v. App. 163 A.*

**Arrest.** Plaintiffs frequently relinquish the right of arrest for the purpose of suing in the Palace Court, on account of its expedition, *Rep. v. 10*—£.20. being the lowest sum for which a defendant can be arrested, is a reason for proposing it as the limit to the jurisdiction of the proposed local courts, *ib. 18*—Arrests take place in the Palace Court for sums above 20*l.*, *Rep. v. App. 6 B.*

**Arundel Borough Court.** Its jurisdiction; periods of holding courts; form of proceeding, &c.; no proceedings therein since 1800, *Rep. v. App. 9 A.*

**Assault, Actions of.** In cases of assault the defendant should not be allowed to pay money into court, *Rep. v. 23*—The Manchester Court Baron possesses jurisdiction in actions of assault; the pleadings are ridiculously voluminous, *Rep. v. App. 2 B.*—It would be desirable that the Manchester Court of Requests should have jurisdiction in small cases of assault, *Rep. v. App. 10 B.*

**Assessment of Damages, Notice of.** Proposal that the defendant be allowed to give six days' notice that he requires damages to be assessed on an inquiry by a jury, and that in all cases where such notice is given, damages shall be so assessed before execution is levied, *Rep. v. 28*—See also *Levy of Execution.*

#### ASSESSORS:

1. *Private Practice and Remuneration.*
2. *Borough Courts.*
3. *County Courts.*

##### 1. *Private Practice and Remuneration:*

Permanent assessors should not be allowed to practise as barristers; at all events, not in their own neighbourhood, *Rep. v. App. 30 B.*—Corporations should have a power of paying a legal assessor from their borough rates, *ib. 36 B.*—Assessors might be allowed to practise as barristers at the assizes and sessions; it has been done in one of the northern counties without evil effect, *ib. 41 B.*—There would be no difficulty in obtaining barristers properly qualified for the purpose; they might act as commissioners of bankrupts, and for taking affidavits and other matters, *ib. 42 B.*—Assessors should be paid liberally by fixed salary, *ib. 41 B.*

##### 2. *Borough Courts:*

The assessor of borough courts might be the recorder of the borough, elected in the same manner as the recorder is at present, or he might be some other individual to be chosen by the inhabitants, *Rep. v. App. 36 B.*—The appointment should be permanent; and the assessor should be a barrister, *ib.*

##### 3. *County Courts:*

The undersheriff for Lancaster has for many years been assisted in the county court by a barrister competent by legal knowledge and experience to act as assessor in the trial of causes, *Rep. v. 7*—The sheriff should have the power of appointing an assessor

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3. *County Courts*—continued.

for the county court, *Rep. v. App. 5 A.*—It would be extremely desirable to appoint a permanent assessor, who should be a barrister, to preside and try causes in the county court, *ib. 30 B.*—Assessors trying causes in a number of different towns would be liable to the objection urged against the Welsh judicature, *ib. 36 B.*—The sheriff, with the assistance of a barrister of a certain number of years' standing, might administer justice as well as any judge of the proposed local courts, *ib. 40 B.*—It should be a *sine qua non* that the sheriff should have an assessor, except in certain counties; he should be a barrister of seven or ten years' standing, *ib. 41 B.*

See also *Issue. Judges, 2. Lancaster County Court. Trials, 1. Undersheriffs.*

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1. *Questions as to Inconvenience arising from the Assizes being held at one Place only, for the County; and Answers thereto.*

2. *Delay and Expense from Trials at Assizes.*

1. *Questions as to Inconvenience arising from the Assizes being held at one Place only, for the County; and Answers thereto:*

Question whether any or what degree of inconvenience arises from the Court of Assizes being held at one place only for the whole county, *Rep. v. App. 1 A.*—And as to what causes of action such inconvenience, if any, is more particularly felt in, *ib.*—Answers thereto, *ib. 2 A.*—228 A.; *ib. 1 A.*—132 A.

2. *Delay and Expense from Trials at Assizes:*

Power of defendants to cause delay in trials at assizes, *Rep. v. 15, 16*—Nearly one-half of the causes tried at the assizes are for causes of action not exceeding 20 *l.* each, and the expense of litigating them is equal to at least four times the aggregate amount actually recovered, *ib. 16*—Average expenses of plaintiff and defendant in prosecuting a suit to judgment and execution at the assizes, *ib.*—It would be very difficult, with the present number of judges, that assizes for the trial of causes in the country should be held more than twice a year, *ib. 17*—It would be impossible that they should be held so frequently as to remove the objections on the ground of delay, or at so many places as to obviate the present objections on the score of expense and inconvenience, *ib. 18.*

Fraudulent debtors have the means frequently of making away with their effects, through the time that must elapse before a cause is tried, *Rep. v. App. 13 B.*—There is very great inconvenience from the delay and expense of carrying causes to the assizes, *ib. 15 B.*—There are advantages as well as evils in a man in humble station having a cause for trial at the assizes, *ib. 33 B.*—An action for a debt under 20 *l.* might be tried at the assizes for a very small sum, if the witnesses reside near the assize town, *ib. 40 B.*

See also *Bristol. Entering Causes. Issue. Judgment, 1. Kent, County. Trial of Actions, 1. Witnesses, 1. York, County.*

*Atherley & Hall, Messrs.* (Their Answers to Queries.)—Bankers, Southampton; several courts in the county would be an improvement, *Rep. v. App. 31 A.*

*Atkinson, Thomas.* (His Answer to Queries.)—Town clerk of Peterborough; is in favour of continuing the existing local courts of the kingdom, *Rep. v. App. 207 A.*

## Attachment of Goods:

1. *To compel Appearance:*

This practice is adopted in county courts; it is injurious to credit, and is performed by the lowest description of agents, it causes annoyance, and leads to extortion, *Rep. v. 8*—Whether the proceedings be by justices or common plaintiff, the seizure, if good, is the first notice to the defendant, *ib.*—The same practice prevails in some of the Hundred Courts and Courts Baron, *ib. 9.*

2. *To compel Payment or Security:*

A court should be established enabling a creditor to attach or impound a debtor's effects until his claim be established, and that he should then have power to sell in satisfaction of debt and costs, or have security until they were paid, *Rep. v. App. 89 A.*

See also *Distringas. Foreign Attachment.*

*Attendance of Parties.* In the Middlesex County Court the judge has no power to compel the attendance of parties; it is desirable that he should have that power, *Rep. v. App. 20 B.*

*Attendance*

*Attendance of Witnesses.* Want of sufficient means to compel the attendance of witnesses in the inferior courts, *Rep. v. 5*—This is a defect incident to all inferior courts of limited jurisdiction, *ib. 9*—The attendance of witnesses should be enforced by a summons, signed by the judge or registrar, with or without a *duces tecum*; the obedience to the summons being enforced by action at the suit of the party injured, or by specific penalty, *ib. 27*.

*Attending Trial.* Amount allowed to attornies for attending trials in the Palace Court, *Rep. v. App. 5 B.*

#### ATTORNIES:

1. *Answers to Questions by Attornies, Solicitors, &c.*
2. *Practice of Attornies in Local Courts.*
3. *Manchester Court of Requests.*
4. *Middlesex County Court.*
5. *Palace Court.*
6. *Tower Hamlets Court of Requests.*

##### 1. *Answers to Questions by Attornies, Solicitors, &c.:*

Answers to questions circulated by the commissioners on the subject of courts for recovery of small debts, *Rep. v. App. 2 A. et seq.*

##### 2. *Practice of Attornies in Local Courts:*

In the proposed local courts a fair remuneration should be allowed to the professional agent for his services, to be regulated according to the importance of the cause, *Rep. v. 21, 22*—It is feared that local jurisdictions would be the vineyards which the lower order of professional men would labour in, *Rep. v. App. 15 B.*—Great evils of local courts if a low race of attornies should be allowed to practise in them, *ib. 37 B.*—Doubts whether any scale of remuneration that can be anticipated will be sufficient to induce attornies of respectability to practice in local courts, *ib.*—Proposed remuneration to attornies and agents in the event of causes being sent to the sheriff for trial instead of being tried in the proposed local courts, *ib. 39 B.*—Respectable attornies would not think it worth their while to practise in local courts, *ib. 40 B.*—Difficulty with regard to parties not being able to employ their own attornies in the event of local courts being established, *ib. 40 B. 42 B.*

##### 3. *Manchester Court of Requests:*

There is no instance in which attornies are allowed to practise therein, *Rep. v. App. 11 B.*

##### 4. *Middlesex County Court:*

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##### 5. *Palace Court:*

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##### 6. *Tower Hamlets Court of Requests:*

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See also *Lord Mayor's Court.*      *Practice of Inferior Courts.*      *Professional Assistance.*

*Auction Duty.* The exemption from payment of auction duty on goods sold under *fi. fa.*'s should be extended to the Palace Court, *Rep. v. App. 25 B.*

*Ayliff, T.* (His Answers to Queries.)—Clerk of the Court of Requests, Holbeach, Lincolnshire; utility of the local courts; arguments against the establishment of one local court of general jurisdiction, *Rep. v. App. 203 A.*



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*Bacon, Cobbold, Rodwell & Co.* (Their Answers to Queries.)—Attornies, Ipswich; answers from Mr. Rodwell, for the firm, to questions circulated by the commissioners in favour of continuing the county court, and extending its jurisdiction, *Rep. v. App.* 20 A.

*Bail.* On the removal of a cause, the bail in the Palace Court remain liable until the justification of bail in the superior court, when they are discharged, *Rep. v. App.* 24 B.

*Baildon v. Potter.* Reference to this case, 3 Barn. & Ald. 210, as to the jurisdiction of the court of requests causing injustice when the plaintiff sues elsewhere, *Rep. v. 12, note.*

*Bailiffs, Officers, and Messengers:*

*Inferior Courts.*—Objection to the want of efficient inferior ministers to serve and execute the process of inferior courts, *Rep. v. 5*—Objection to the abuses occasioned by entrusting the execution of process to improper agents, for whose misconduct no superior is responsible, *ib.*—Complaints against the present inferior courts from the oppressive extortion and general ill conduct of bailiffs, *ib.* 22—In the proposed local courts the good conduct of the bailiffs should be secured by recognizances and summary punishment, *ib.* 22—All ministerial duties should be performed by known and responsible agents of the court, *ib.*—Their appointment would be necessary if the suggestions for service of process and filing duplicates be adopted; their proposed duties and mode of remuneration; one should be appointed for each large town of a district, *ib.* 23—Evils of the processes of inferior courts being entrusted for execution to men of the worst character, *Rep. v. App.* 2 c.

*Middlesex County Court.*—Amount of fees paid to bailiffs; duties they have to perform, *Rep. v. App.* 18 B.—Number of bailiffs necessary to be employed to execute the process of the court, *ib.* 20 B.

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*Banbury Borough Court.* Jurisdiction of the court of record at Banbury; it has been for some years disused, but is about being re-established, *Rep. v. App.* 62 A.—Proceedings taken for the purpose of re-opening this court, *ib.* 33 B.—Jurisdiction of this court when it was efficient; reason of its falling into disuse; its constitution, *ib.* 34 B.—Proposed period for the sittings of this court, *ib.* 37 B.

*Banister, Eccles & Co., Messrs.* (Their Answers to Queries.)—Cotton spinners and manufacturers, Blackburn; two or three local courts of general jurisdiction might be established with advantage to the public good, *Rep. v. App.* 115 a.

*Bankers, Merchants, and Others.* Answers received by the commissioners from bankers, merchants, and others, to questions circulated by the commissioners on the subject of courts for the recovery of small debts, *Rep. v. App.* 1 a.—134 a.

*Banhes, L. L.* (His Answers to Queries.)—Clerk of the Court of Requests, Tattershall; is in favour of continuing the local courts, *Rep. v. App.* 205 A.

*Bankruptcy, Insolvency, &c.* Risk plaintiffs run of the defendant becoming bankrupt or insolvent, through the delay and expense in suing for small debts in the superior courts, *Rep. v. 16*—Manner in which defendant shall notify his discharge thereunder as a means of defence, *ib.* 25—The whole system of bankruptcy in the country is defective, *Rep. v. App.* 28 B.

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*Bankruptcy Judge.* It would be a great advantage if a judge were appointed in cases of bankruptcy instead of commissioners, *Rep. v. App.* 28 B.—A local judge would be an improvement on the present system of bankruptcy in some places, *ib.* 30 B.

*Barber, David.* (His Answers to Queries.)—Corn and flour merchant, Bolton-le-Moors; the jurisdiction of the county court should be amended and extended, *Rep. v. App.* 90 a.

*Barnes, John.* (His Answers to Queries.)—Attorney, St. Helen's, Lancaster; is in favour of the assizes for Lancaster being adjourned to Manchester and Liverpool, *Rep. v. App.* 14 A.

*Barney, J. D.* (His Answers to Queries.)—Birmingham; is favourable to a local court of general jurisdiction, *Rep. v. App.* 104 a.

*Barnstaple Local Court.* The jurisdiction of the local court at Barnstaple is very limited, *Rep. v. App.* 20 a. 91 a.

*Barons.* The great barons disdained to attend as suitors in the county courts after the departure of the bishops and clergy, in the reign of Will. 1, *Rep. v. 13, note.*

*Barriers.*

**Barristers.** Barristers of ten years standing should be selected for the office of judge of the new local courts; the number required will probably not exceed twenty, *Rep. v. 21*—Advantage that would arise by having a barrister or two magistrates as judges in the Carmarthen County Court, when causes by justices are to be tried, *Rep. v. App. 31 A.*

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**Barrow, G. H.** (His Answers to Queries.)—Attorney, Southwell, Nottinghamshire; answers to queries circulated by the commissioners in favour of the continuance of county courts, they being adjourned in the same manner as the quarter sessions are adjourned, *Rep. v. App. 169 A.*

**Bartlett, C. C.** (His Answers to Queries.)—Town-clerk of Wareham; opinions in favour of extending the jurisdiction of the borough courts and against a general local court, *Rep. v. App. 127 A.*

**Barton-upon-Humber (Lincolnshire) Court of Requests.** Jurisdiction of the Court of Requests of Barton-upon-Humber, *Rep. v. App. 159 A.*

**Bassett & Grant, Messrs.** (Answers to Queries.)—Bankers, Leighton Buzzard; one local court of general jurisdiction should be established throughout the county, *Rep. v. App. 6 a.*

**Bath, City of.** Advantages that would result from extending the jurisdiction of the local courts there, *Rep. v. App. 16 A. 2 a. 32 a.*—Constitution, practice, &c. of the court at Bath, *ib. 24 A. 204 A. 64 a.*

**Bayfield, R.** Communication from, stating certain proceedings in the hundred court of Hemlingford, *Rep. v. App. 6 c.*

**Bayldon, John.** (His Answers to Queries.)—Under-sheriff for the county of the city of York; suggestions for amending the county court in lieu of establishing a general local court, *Rep. v. App. 33 A. 34 A.*

**Bayley, Richard.** (His Answers to Queries.)—Merchant, Plymouth; opinions in favour of fixed courts at convenient distances in each district, *Rep. v. App. 88 a.*

**Beale, William.** (His Answers to Queries.)—Of Birmingham; is in favour of superseding the present courts and establishing district courts, *Rep. v. App. 81 a.*

**Beamont, W.** (His Answers to Queries.)—Attorney, Warrington; the county court ought on no account to be destroyed, but altered, and its powers extended, *Rep. v. App. 90 A. 91 A.*

**Beck, Dodson & Co., Messrs.** (Their Answers to Queries.)—Bankers, Welch Pool; recommendation of one local court of general judicature throughout the country, *Rep. v. App. 85 a.*

**Beddome, R. B.** (His Answers to Queries.)—Attorney; suggestions for establishing one local court of general jurisdiction throughout the country; proposed jurisdiction, practice, &c. *Rep. v. App. 97 A. 98 A.*

**Bedfordshire.** Reasons why the county court is not satisfactory, *Rep. v. App. 6 a.*

**Berkshire.** Towns in which local courts are held; their jurisdiction, *Rep. v. App. 57 A. 167 A.*—See also *Wallingford Court of Record.*

**Berry, William, Junior.** (His Answers to Queries.)—Town clerk of Kendall; the continuance of local courts recommended; actions above 40s. should be commenced in the superior courts, *Rep. v. App. 143 A.*

**Best, James.** (His Answers to Queries.)—Deputy clerk of the peace for the county of Worcester; is against the establishment of local courts, and in favour of the continuance of the county court, *Rep. v. App. 2 A. 3 A.*

**Bezfield, J.** (His Answers to Queries.)—Registrar of the Court of Requests, Norwich; is in favour of extending the jurisdiction of the court of requests, *Rep. v. App. 172 A.*

**Bickers, S.** (His Answers to Queries.)—Retail dealer, Selby; answers to queries circulated by the commissioners in favour of the establishment of new local courts in each county, *Rep. v. App. 94 a.*

**Bickley, B. & Co., Messrs.** (Their Answers to Queries.)—Merchants, Bristol; recommendations for the improvement of the Tolzey Court, *Rep. v. App. 85 a.*

**Biddle, Mountford & Co., Messrs.** (Their Answers to Queries.)—Bankers; Shiffnal Bank, Shropshire; answers in favour of local courts confined to hundreds, *Rep. v. App. 57 a.*

**Bideford Court of Record.** Jurisdiction of the court of record for the borough of Bideford; expense of proceeding therein, *Rep. v. App. 128 A.*

- Bigg, L. O.** Letter from Mr. Bigg, secretary to the Chamber of Commerce, Bristol, transmitting answers to questions by that body, *Rep. v. App. 99 a.*
- Bill of Particulars.** Information given therein in ordinary cases of debt or assumpsit; suggestion that printed forms be used, to be obtained from the messengers, *Rep. v. 23.*
- Bills of Costs.** See *Costs.*
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- Bird, Thomas.** (His Answers to Queries.)—Clerk of the peace for the county of Hereford; the local courts should be amended, and courts of conscience established in every market town, *Rep. v. App. 29 A.*
- Birmingham Local Court.** There is a local court at Birmingham; its jurisdiction; how far adequate to the administration of justice, *Rep. v. App. 7 A.*
- Bishop, J. T.** (His Answers to Queries.)—Attorney, Melton Mowbray; is in favour of continuing the local courts, *Rep. v. App. 185 A.*
- Bishop's Castle Borough Court and Manor Court.** Extent of jurisdiction; average length of time between first process and final judgment; average of expense in the borough and manor court of Bishop's Castle, *Rep. v. App. 105 A.*
- Bishops.** William I. in the year 1085, prohibited the bishops from sitting as judges in the local courts, *Rep. v. 13 note.*—See also *Barons.* *Earls.*
- Black, J. & Sons, Messrs.** (Their Answers to Queries.)—Wholesale and retail dealers, Ford Forge, near Berwick; there should be a local court of general jurisdiction, *Rep. v. App. 120 a.*
- Blackburn Hundred Court.** Memorial of attornies, merchants, shopkeepers, and others, of Blackburn, to Lord Melbourne, in favour of Lancaster assizes being held at Preston, and for the Wapentake Court, held at Clitheroe, being removed to Blackburn, *Rep. v. App. 179 A.*—Form of process and rules of practice of the Blackburn Hundred Court, *ib. 180 A.*—Suggestions for holding this court at Blackburn instead of at Clitheroe, *Rep. v. App. 3 c.*
- Blackstone, Sir William.** The suspicions entertained by Sir William Blackstone as to the policy of erecting courts, "with methods of proceeding entirely in derogation of the common law, and whose large discretionary powers make a petty tyranny in a set of standing commissioners," have not been removed by later experience, *Rep. v. 11.*
- Bleckley, John.** Letter from John Bleckley, grocer at York, in favour of establishing local courts to be held by a circulating commission, the expenses of recovery being defrayed by a county rate, *Rep. v. App. 52 a.*—Answers to questions in favour of a monthly court in every market town, *ib.*
- Bloxsome, Edward.** (His Answers to Queries.)—Deputy clerk of the peace for the county of Gloucester; answers in favour of extending the jurisdiction of the county or local courts, and against establishing one general local court for the whole county, *Rep. v. App. 21 A. 22 A.*
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- Boger, D.** (His Answers to Queries.)—Town clerk, Plympton Earle; one local court of general jurisdiction should be established in the county of Devon, *Rep. v. App. 136 A.*
- Boothman, Thomas.** Letter from Mr. Thomas Boothman, secretary to the Chamber of Commerce, Manchester, enclosing answers by that body to the questions circulated by the commissioners, *Rep. v. App. 132 a.*
- Borlase, John.** Letter from Mr. J. Borlase, steward of the Stannary Court of Cornwall, showing that these courts have fallen into disuse; nature of the appeal therefrom, *Rep. v. App. 123 A.*
- Borough Courts.** The courts of particular boroughs are a branch of the inferior courts of the kingdom, *Rep. v. 6*—The courts of different boroughs by grant or prescription frequently possess jurisdiction to an unlimited amount, and several are stated to be of public convenience; their utility is fettered by their local limits, *ib. 10*—Borough courts are useful in their respective jurisdictions, and should be retained, *Rep. v. App. 17 A.*—Manner in which they might be made efficient for all the purposes required, *ib. 36 B.*—Distinction between remodelling the existing borough courts and establishing new local courts, *ib. 38 B.*—Evidence in favour of remodelling the borough courts, instead of establishing new local courts, *ib.*
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- Boston (Lincolnshire) Local Courts.** Particulars as to the local courts in the borough of Boston, *Rep. v. App. 1 a.*
- Bourne, Titus.** (His Answers to Queries.)—Clerk of the Court of Requests, Alford; is in favour of two local courts for the county of Lincoln, *Rep. v. App. 186 A.*

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- Bracton de Actionibus.* Reference to this work, fol. 103, showing that the principle of joining several causes of action in one suit was formerly recognized, *Rep. v. 25, note.*
- Bradford.* The Pontefract Court Baron is held twice a year for the trial of causes at Bradford, *Rep. v. 9.*
- Braithwaite, F.* (His Answers to Queries.)—Hosier, Nottingham; answers to queries circulated by the commissioners, in favour of increasing the jurisdiction of the county court, and allowing sufficient fees to enable respectable men to practise therein, *Rep. v. App. 76 a.*
- Brecon County.* The courts baron are the only local courts in this county; they are unsatisfactory, *Rep. v. App. 142 A.*
- Brentford.* Sittings of the Middlesex county courts at Brentford; periods of holding them, *Rep. v. App. 16 B.*
- Brewin & Whetstone, Messrs.* (Their Answers to Queries.)—Worsted spinners, Leicester; there should be a local court of general jurisdiction, *Rep. v. App. 83 a.*
- Brice, W. D.* (His Answers to Queries.)—Clerk of the Court of Requests for the City of Bristol; jurisdiction of that court, *Rep. v. App. 118 A.*
- Bridgnorth Court of Record.* Extent of jurisdiction; average length of time between first process and final judgment; average expense, *Rep. v. App. 105 A.*
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- Briefs.* Sum allowed to attornies in the Palace Court for drawing and copying briefs, *Rep. v. App. 5 B.*
- Brighthelmstone.* The inhabitants of Brighthelmstone are often summoned to the county court at Chichester, a distance of forty miles, instead of to Lewes, which is only eight miles distant, *Rep. v. 6.*
- Bristol Chamber of Commerce.* (Answers to Queries.)—Particulars of the various local courts in Bristol; opinion as to the establishing new local courts, *Rep. v. App. 99 a.-102 a.*
- Bristol City and County.* Names and extent of jurisdiction of local courts, which are adequate to the administration of justice, *Rep. v. App. 95 A.-97 A.*—Local courts in the City of Bristol; jurisdiction of them; how far they are adequate and satisfactory, *ib. 118 A. 32 a. 34 a. 46 a. 47 a. 48 a. 50 a. 53 a. 63 a. 64 a. 82 a. 89 a. 93 a. 98 a.*—No new court is required for Bristol; improvements in present courts suggested, *ib. 86 a.*—Jurisdiction, costs, &c. of the Court of Conscience of the City of Bristol, *ib. 218 A.*—Assizes should be held oftener, *ib. 93 a.*—See also *Tolzey Court, Bristol.*
- Brockman, R. T.* (His Answers to Queries.)—Town clerk and clerk of the Court of Requests, Folkestone; is against the establishment of one local court of general jurisdiction, unless held at different parts of the county and at frequent intervals, *Rep. v. App. 147 A.*
- Brooke, Richard.* (His Answers to Queries.)—Attorney, Liverpool; is in favour of assizes being held in Manchester and Liverpool, and in favour of improving the county courts, *Rep. v. App. 22 A.-24 A.*—Letter from, inclosing memorial from Liverpool in favour of the assizes being held there twice a year, *ib. 58 A.*
- Brooks & Lee, Messrs.* (Their Answers to Queries.)—Attornies, Whitchurch, Shropshire, and stewards of the Hundred Court of Mayler, Flintshire; there should be one local court of general jurisdiction for the county, *Rep. v. App. 154 A.*
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- Brown, W.* (His Answers to Queries.)—Of Liverpool; answers in favour of amending local courts, *Rep. v. App. 131 a.*
- Buckleys, Shaw & Co., Messrs.* (Their Answers to Queries.)—Bankers, Saddleworth; the present county court works well, *Rep. v. App. 65 a.*
- Burnell & Sons, Messrs.* Letter from Messrs. Burnell, merchants, of Plymouth; suggesting the establishing of district courts of requests for small debts, and amending the county courts for larger ones, *Rep. v. App. 41 a.*
- Burton, E. S.* (His Answers to Queries.)—Town Clerk of Daventry; a court of general jurisdiction might probably be of some advantage in the county of Northampton, *Rep. v. App. 120 A.*
- Burton, Lloyd & Co.* (Their Answers to Queries.)—Bankers, Salop; in favour of amending the local and county courts, *Rep. v. App. 15 a.*

**Bush, John.** (His Answer to Queries.)—Clerk of the Court of Requests for Bradford, &c.; is in favour of extending the jurisdiction of courts of requests, *Rep. v. App.* 209 A.

**Butlin, W.** (His Answers to Queries.)—Banker, Rugby; opinions in favour of the extension of the county court, or of establishing a new court of general jurisdiction, *Rep. v. App.* 77 a.

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**Cambridge County.** Names and jurisdictions of local courts in the county of Cambridge, *Rep. v. App.* 5 A. 138 A. 213 A.—Amendment of the county court recommended, *ib.* 5 A.—How far local courts are adequate to the due administration of justice, *ib.* 213 A.—See also *County Clerks*.

**Canterbury, Sandwich, Fordwich, &c.** Jurisdiction of local courts in Canterbury, Sandwich, Fordwich, &c., *Rep. v. App.* 137 A.—See also *Kent County*.

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**Cardigan County.** The only local court is the county court, *Rep. v. App.* 32 A.

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**Carmarthen, County of the Borough of.** Answers to questions by the sheriffs of the county of the borough of Carmarthen, in favour of the courts being left to continue as at present, *Rep. v. App.* 122 A.

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**Carnarvonshire.** The only local courts besides the county court are those of the boroughs of Carnarvon and Pwllheli; extent of their jurisdiction; costs, &c., *Rep. v. App.* 47 A. 93 A.—See also *Juries*, 1.

**Carr, Thomas.** (His Answers to Queries.)—Steward of the court baron of the hundred of Blackburn; suggestions for extending the jurisdiction of courts baron, and against the establishment of one local court, *Rep. v. App.* 178 A.

**Carter, Charles, jun.** (His Answers to Queries.)—Town clerk, Bideford; is in favour of two local courts of general jurisdiction for the county of Devon, *Rep. v. App.* 128 A.

**Catton, John.** (His Answers to Queries.)—Grocer, York; recommendations for continuing the county and city courts, and extending their jurisdiction, *Rep. v. App.* 60 a.

**Causes.** See *Actions at Law*. *Defended Causes*.

**Causes of Action.** In the county court at Lancaster, suitors having claims above 10*l.* frequently abandon part of their demand, and lay their damages under that amount, for the sake of the speedier and cheaper remedy which the court affords, *Rep. v.* 7—Similar effect produced by the facility of proceeding in the Palace Court, where the suit is above 20*l.*, *ib.* 10.

Proposition of the commissioners, that a plaintiff in the local court should be allowed to join several causes of action in the same suit, although the same could not have been joined in one and the same action in a superior court, *Rep. v.* 25.

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**Caw, John.** (His Answers to Queries.)—Manager of the Joint Stock Bank, Halifax; evils of delay, and expense in recovering debts, *Rep. v. App.* 46 a.

**Cawdor, The Right Hon. the Earl of.** Letter from his Lordship in favour of greater simplicity of pleading in county or local courts; also in favour of amending the county court and increasing its jurisdiction; the judge should be a permanent officer, *Rep. v. App.* 85 A.

**Chairman of Quarter Sessions.** The chairman of the quarter sessions preferred to the under-sheriff for presiding on trials in the county court in Anglesey, *Rep. v. App.* 8 A.

**Chamber Business.** Judges of the Palace Court should be empowered to sit at chambers to determine interlocutory matters, *Rep. v. App.* 25 B.

**Chancellor, John.** (His Answers to Queries.)—Clerk of the Court of Requests, Margate; recommendations in favour of extending the jurisdiction of the court of requests, *Rep. v. App.* 141 B.

**Chancery Commissions.** A local judge might be very useful in many businesses arising out of Chancery, such as executing commissions, &c., *Rep. v. App.* 30 B.

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*Chapman, W. & J. H., Messrs.* (Their Answers to Queries.)—Bankers, Atherstone; suggestions for doing away with the county courts, and establishing one of greater respectability in each county, *Rep. v. App.* 45 a.

*Charge, J.* (His Answers to Queries.)—Clerk of the peace for the county of Derby; the present local courts are useful; it is doubtful whether there would be business enough for a general local court, *Rep. v. App.* 91 A. 92 A.

*Chester County.* List of local courts therein; extent of their jurisdiction; how far complaints have been made respecting them, *Rep. v. App.* 35 A. 119 A.—Suggestions for the Sheriff's Court being held before a barrister alternately at Knutsford and Chester; *ib.* 59 A.—The borough and hundred courts should be made subordinate to the sheriff's court, *ib.*

*Chester, Edward.* (Analysis of his Evidence.)—An attorney; jurisdiction of the county court might be extended to 10*l.*; the practice of the superior courts might be altered, and the costs reduced, so as to give the creditor all the advantages of the proposed local courts, *Rep. v. App.* 39 B.—In what manner costs might be reduced; respectable attorneys would not practice in local courts; alteration of proceedings and pleadings in small debts recommended, *ib.* 40 B.—Proposals as to notices of defence; admissions; proof of service of notices; appointment of assessors, &c. *ib.* 41 B.—Practice of the Liverpool borough court; if local courts be established, clients will not be able to employ their own attorney, *ib.* 42 B.

*Chichester City Court.* Its jurisdiction; form of proceeding; average expenses, &c.; it is the only local court at all effective, *Rep. v. App.* 9 A.

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*Chirbury Local Court.* Extent of jurisdiction; average length of time between first process and final judgment; average of expense, *Rep. v. App.* 105 A.

*Choice of Courts.* In many cases the plaintiff may choose whether he will proceed in the court of requests, the court baron, the hundred or wapentake court, the county court, or one of the superior courts; injustice that may be occasioned thereby, *Rep. v.* 13 —Evils arising to plaintiffs from the choice of courts, as regards choice between the county court and superior courts, *ib.* 16—Where the plaintiff resides at a greater distance than 20 miles from the defendant, or where the cause of action did not arise wholly or in a material part in the jurisdiction in which the defendant resides, the plaintiff should have his option of proceeding in the local court or one of the superior courts, if his demand exceeds 40*s.*, *ib.* 20—Plaintiffs should have the option of proceeding in the superior or in the local courts, *Rep. v. App.* 39 A.

See also *Residence of Defendant.*

*Church Courts.* William I. in the year 1085, prohibited the causes of the church being tried in the local courts, but ordered them to be tried in courts of their own, *Rep. v.* 13, note (a).

*Cinque Ports.* Names of local courts; their jurisdiction; how far they are inadequate to the due administration of justice; improvements suggested, *Rep. v. App.* 25 A. 26 B.

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*Circuits.* In the reign of Henry II. England was divided into six circuits for the administration of justice: with certain variations, this practice has continued ever since, *Rep. v.* 14—In the reign of Edward I. the course of administering justice by justices in their different circuits, had, as appears from Bracton, been well established, *ib.*

*Claridge, George.* Letter from George Claridge, Clerk of the Court of Requests, Sevenoaks, Kent, showing that the court is defective both in constitution and practice, but that it is not desirable to establish one local court of general jurisdiction throughout the county of Kent, *Rep. v. App.* 128 A.

*Clergy.* See *Bishops.*

*Clerks of Courts of Requests.* The Clerks of the Court of Requests for the Tower Hamlets, are attorneys; the court is swayed by their opinion in matters of law, *Rep. v. App.* 43 B.

*Clerks of the Peace.* Answers by clerks of the peace to questions circulated by the commissioners, on the subject of courts for recovery of small debts, *Rep. v. App.* 2 A. *et seq.*—Advantage that would result from the selection of a competent clerk of the peace, to be appointed by the Chief Justice of the court above, in Huntingdonshire, *ib.* 13 A.

*Clitheroe.* See *Blackburn Hundred Court.*

*Clithero, Robert.* (His Answers to Queries.)—Clerk of the Court of Requests, Horncastle; the jurisdiction of the present court should be extended, *Rep. v. App.* 208 A.

**Clowes, Thomas.** (His Answers to Queries.)—Clerk of the Court of Requests, Great Yarmouth; opinions in favour of establishing one local court of general jurisdiction, *Rep. v. App.* 162 A.

**Clun Borough Court and Lordship Court.** Extent of jurisdiction; average length of time between first process and final judgment; average of expense, *Rep. v. App.* 105 A.—Copy rules of practice, and notes on the rules, *ib.* 107 A—112 A.—Copy bills of costs of plaintiff and defendant in suits in the Lordship Court, *ib.* 112 A, 113 A.

**Coates, John.** (His Answers to Queries.)—Banker, Ripon; suggestion of amendments in the county court, *Rep. v. App.* 8 A.

**Cobb & Son, Messrs.** (Their Answers to Queries.)—Bankers, Margate; are in favour of extending the jurisdiction of courts of requests, *Rep. v. App.* 18 A.

**Coffin, Joseph.** (His Answers to Queries.)—Clerk of the Court of Requests, Merthyr Tydfil; opinions with respect to continuing the Court of Requests, and establishing similar ones in populous districts, *Rep. v. App.* 146 A.

**Coke, Lord.** The provision for establishing a permanent limit between the superior and inferior jurisdictions is stated by Lord Coke, in 2 Inst. 311, to have been new, and made in favour of the county court; but experience taught that this course was so full of danger and trouble, that it was forborne, and the defendant left to take such course as the common law gave him, *Rep. v.* 14.

**Coleman, Thomas.** (His Answers to Queries.)—Town Clerk, Leominster; is in favour of abolishing the county court, and establishing other courts for the recovery of debts under 100 l., *Rep. v. App.* 132 A.

**Collateral Defence.** Where the defendant meditates setting up a collateral defence at the trial, he should state briefly what the ground of defence is, in general terms, without involving either party in the technicalities of special pleading, *Rep. v.* 26.  
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**Collection of Debts.** Difficulty tradesmen have in collecting their debts when resisted, from the delay which the present mode of suing allows debtors, *Rep. v. App.* 26 B.

**Collett, Kenrick.** (His Answers to Queries.)—Attorney; opinions against the establishment of local courts, and in favour of protecting the superior courts, *Rep. v. App.* 17 A—19 A.

**Collier, John.** (His Answer to Queries.)—Merchant, Plymouth. The county courts should be held oftener, and not be confined to one place, *Rep. v. App.* 102 A.

**Collins, Richard.** (His Answers to Queries.)—Town Clerk of Wenlock; is against the establishment of a local general court, *Rep. v. App.* 184 A.

**Commissioners for taking Affidavits.** The judges of the Palace Court should have the power of appointing commissioners for taking affidavits, *Rep. v. App.* 25 B.  
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**Commissioners of Bankruptcy.** Gross injustice and abuses arising from the selection of country commissioners by the solicitor for the petitioning creditor, *Rep. v. App.* 28 A.  
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**Commissioners of Courts of Requests:**

**Generally.**—So much is left to their discretion that they ought to be persons of considerable ability and learning to perform their functions with propriety; but they consist of persons whose pursuits in life give no assurance of their possessing these qualities, *Rep. v.* 12—There is a suspicion that their decisions are often wanting in impartiality, *ib.*

**Manchester.**—Qualification of the commissioners of the courts of requests, Manchester, *Rep. v. App.* 3 B.

**Tower Hamlets.**—Evils arising from the mode of appointment of the Commissioners; from the persons appointed; from the number appointed, *Rep. v. App.* 20 B. 21 B. 23 B.—Number of commissioners who usually attend, *ib.* 42 B. 43 B.—Rules of law or equity by which their decisions are guided, *ib.* 43 B.

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**Commissions of Bankruptcy.** Proposal, that titles under commissions of bankruptcy should be excluded from the jurisdiction of the proposed local courts, *Rep. v.* 18.

**Common Law.** The joinder of several causes of action in the same suit, is a principle which was recognized by the ancient and simple rule of common law, *Rep. v.* 25.

**Common Pleas at Lancaster.** *See Lancaster Common Pleas.*

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*Concurrent Jurisdictions.* The existence of so many courts of concurrent jurisdiction, founded on principles and adopting modes of procedure so widely different, is an evil which requires a remedy, *Rep. v. 13.*

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*Conduct Money.* Amount of conduct money for conveying a defendant to Lancaster under an execution from the Court of Requests at Manchester, *Rep. v. App. 1 B.*—If taken to prison, though the defendant may settle the debt and costs, yet he must also pay the conduct money, *ib. 2 B.*—It is usually paid out of the funds of the Shopkeepers' Club, *ib.*

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*Cooper, Cooper & Purton, Messrs.* (Their Answers to Queries.)—Bankers, Bridgnorth; recommendations for the establishment of one court of general jurisdiction throughout the county, *Rep. v. App. 10 a.*

*Copyhold Courts.* Proposed regulation that the jurisdiction which copyhold courts now possess with regard to real property should remain, *Rep. v. 20.*

*Copyhold Property.* Proposals that titles to copyhold property be exempt from the jurisdiction of the proposed local courts, *Rep. v. 18.*

*Cornwall County.* The local courts consist of the Stannaries Courts, and the several manor and borough courts in the county, *Rep. v. App. 117 A.*—Jurisdiction of the Stannary and other local courts; how far they are adequate to the due administration of justice, *ib. 32 a.*—The county court is not adequate to the due administration of justice, as at present constituted, *ib. 70 a.*

*Cort, James, jun.* Letter from him, transmitting the answers of a committee of tradesmen of Leicester, *Rep. v. App. 68 a.*

Answers by tradesmen of Leicester to queries circulated by the commissioners, in favour of one local court of general judicature for the county, *Rep. v. App. 68 a.*

## **COSTS :**

### **I. Generally.**

### **II. In particular Courts :**

1. Borough Courts.
2. Borough Courts and Courts Baron.
3. County Courts.
4. Hundred Courts and Courts Baron.
5. Inferior Courts generally.
6. Lancaster Assizes.
7. Lancaster Common Pleas and Superior Courts compared.
8. Lancaster County Court.
9. Manchester Court of Requests and Court Baron.
10. Middlesex County Court.
11. Palace Court.
12. Peveril Court (Nottingham and Derby).
13. Pontefract Court Baron.
14. Tower Hamlets Court of Requests.
15. Wakefield Manor Court.
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### **I. Generally :**

In all legal proceedings the plaintiff ought to be allowed to recover from his adversary the full amount of costs which he has himself been compelled to expend, *Rep. v. 7, 8*—When the process of recovery is speedy, although the real costs allowed may exceed what was necessary, the mischief is alleviated by the consideration that the loss falls upon the party who was in the wrong, *ib. 8*—The losing party ought not to be compelled to pay more than was necessary to the attainment of justice; the fear of heavy costs may prevent a party in narrow circumstances from suing for a just, or resisting an unjust demand, *ib.*—It is desirable that a party recovering a just debt should recover the costs fairly expended, *Rep. v. App. 13 B.*

By curtailing office fees and expenses of witnesses, and adopting means alluded to in former reports, the costs of a cause would in a majority of cases be reduced to at least one half of their present amount, *Rep. v. 19*—Economy necessary on the one hand, and on the other preventing the business being thrown into the hands of needy and unprincipled practitioners, *ib. 29.*



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Costs are very heavy in proportion to debts under 20*l.* when they fall upon the plaintiff in consequence of the failure of the defendant, *Rep. v. App. 27 B.*—Reasons why, though the expense of suits is not beneficial, it is not an unmitigated evil, *ib. 34, B.*—Of what the great evils in law expenses consist, *ib. 40 B.*

Supposed bill of costs on verdict for plaintiff in a cause tried before a judge in ordinary, upon the plan proposed in Lord Brougham's Bill, *Rep. v. App. 127 A.*

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It is a frequent subject of complaint that the costs of borough courts are excessive, not unfrequently amounting to from 10*l.* to 14*l.*, *Rep. v. 11*—They are seldom regulated by any Act of Parliament or charter; the allowance is usually arbitrary, *ib.*

2. *Borough Courts and Courts Baron:*

If courts baron and borough courts are allowed to possess concurrent jurisdiction with such local courts as may be newly established, any restrictions to which the latter may be subject as to costs, will be nugatory; stewards will always allow such costs as will secure a preference to their own courts, *Rep. v. 11.*

3. *County Courts:*

The heavy costs of proceedings in the county court are the subject of general complaint, *Rep. v. 6.*

4. *Hundred Courts and Courts Baron:*

In the hundred courts and courts baron the practice prevails of allowing costs wholly disproportioned to the cause of action, which frequently amount to 7*l.* or 8*l.* on each side, though only 40*s.* can be recovered, *Rep. v. 9.*

5. *Inferior Courts generally:*

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6. *Lancaster Assizes:*

Amount of costs of plaintiff, with three or four witnesses, from Manchester or Liverpool, on trial at the Lancaster assizes, *Rep. v. 16*—Extra costs of a suit tried at the assizes at Lancaster; comparison with the county court, *Rep. v. App. 4 B.*

7. *Lancaster Common Pleas and Superior Courts compared:*

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8. *Lancaster County Court:*

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9. *Manchester Court of Requests:*

Costs of suit in the Manchester Court of Requests where the cause of action is under and where it is above 40*s.*, *Rep. v. App. 1 B.*—Comparison between the costs incurred in the court of requests and in the court baron, *ib. 2 B.*—Amount of costs allowed in actions in the courts baron, at Manchester, *ib.*

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11. *Palace Court:*

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than about a fifth of the expense of a similar suit at Westminster, *Rep. v. App.* 14 B. —Comparative expense of trying actions in the superior courts and in the Palace Court, *ib.* 24 B. —Supposed causes of the expenses being less in the Palace Court than in the superior courts, *ib.* 26 B.

Plaintiff's costs on an issue; verdict for the plaintiff, *Rep. v. App.* 8 B. —Defendant's costs on an issue; verdict for the plaintiff, *ib.* —Plaintiff's costs on an inquiry, *ib.* 9 B. —Plaintiff's costs in an action of debt; judgment for want of plea, *ib.* —Amount of taxed costs in the Palace Court, *ib.* 24 B. —There are no extra costs allowed; amount of plaintiff's and defendant's taxed costs, *ib.* 25 B.

**12. Peveril Court (Nottingham and Derby):**

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**13. Pontefract Court Baron :**

In the Pontefract Court Baron the average expenses of a plaintiff are from 9*l.* to 18*l.*; of a defendant from 6*l.* to 12*l.*, *Rep. v.* 9. —The costs of a plaintiff amount to nearly three times the highest sum that can be recovered, *ib.* —Copies of bills of costs of plaintiff and defendant in the Pontefract Court Baron, showing the fees paid to the steward, bailiff, and attorney, *Rep. v. App.* 73 A. 74 A.

**14. Tower Hamlets Court of Requests :**

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**15. Wakefield Manor Court :**

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**16. Yorkshire County Court :**

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**Counsel (Palace Court).** Number of counsel allowed to practise in the Palace Court, *Rep. v. App.* 5 B. —Foreign counsel are sometimes brought in by both plaintiff and defendant; but the standing counsel take their accustomed briefs, *ib.* 6 B. —Why it is not advisable to open the court to all barristers, *ib.* 7 B. —Evils arising from only four counsel being allowed to practise in the Palace Court, *ib.* 15 B. —It is not desirable to do without counsel in defended cases in the Palace Court, *ib.* 26 B.

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**Counties Palatine.** A bailable writ from the superior court cannot be issued into the Counties Palatine under 50*l.*, *Rep. v. App.* 41 B.

**County Clerks.** Advantage would arise from the appointment of a permanent county clerk in Cambridgeshire, *Rep. v. App.* 5 A. —The county clerk for Middlesex has not been called upon to perform any duty but such as relates to the Act for Small Debts, *ib.* 20 B. —The county clerk and his deputy could dispose of all the actions under 20*l.* in Middlesex, *ib.*

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1. Lancaster.
2. Somersetshire.

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Objections with regard to the jurisdiction, constitution, &c. of county courts, *Rep. v.* 6, 7. —They should retain their present jurisdiction as to real property, *ib.* 20. —

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1. *Generally*—continued.

Restriction of the privileges of county courts as to jurisdiction recommended, *Rep. v. App. 82 A.*—The jurisdiction of county courts might be increased to 10*l.*, but not beyond, *ib. 39 B.*—The sheriff should hold a court in the principal town of his county once a month, and in different towns three or four times a year, *ib. 41 B.*—Suggestions for extending the jurisdiction of County Courts, they being made subject to the rules of the superior courts, *ib. 5 C.*

II. *In particular Counties:*

## 1. Lancaster:

In what cases it is preferable to sue in the county court to the Court of Common Pleas at Lancaster, *Rep. v. App. 3 B.*—Advantages that would be derived by extending the jurisdiction of the county court, *ib. 4 B.*

The county court is very much resorted to since a late alteration in practice, and since its being holden by adjournment at Manchester, *Rep. v. App. 2 B.*—There are two modes of proceeding therein; one by justices out of Chancery, and the other by the ancient common law distringas, which is called proceeding by common plaint, *ib. 3 B.*—Comparison of the county court and court baron as to jurisdiction, costs, &c., *ib.*

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*Court Fees.* Amount of court fees, including the jury in the Palace Court, *Rep. v. App. 5 B.*—The heavy court fees in the superior courts should be reduced, *ib. 39 B. 40 B.*

*Court of Passage (Liverpool).* It is adequate to the due administration of justice in small matters; amendments suggested with regard to appeals and new trials, *Rep. v. App. 24 A.*

*Courts Baron:*

*Generally.*—These courts constitute a branch of the inferior courts of England, *Rep. v. 6.*—Their jurisdiction is limited in personal suits to causes of action under 40*s.*; defects they labour under, *ib. 9.*—They should retain their present jurisdiction as to real property, *ib. 20.*—As regards the West Riding of Yorkshire, if courts baron were amended, they would be preferred to new local courts, *Rep. v. App. 20 A.*

*Cumberland.*—Jurisdiction of courts baron; they are quite inadequate to the administration of justice, and are unsatisfactory to the public, *Rep. v. App. 51 A.*

*Manchester.*—Suits in the courts baron are principally confined to cases where there is no jurisdiction in the court of requests, *Rep. v. App. 2 B.*—Abuses incident to this court; practice by attornies' clerks therein; a court of requests properly managed would be a good substitute for it, *ib. 12 B.*

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*Courts of Justice.* The destruction of the ancient system of courts, (a favourite object of Norman policy,) was to a great extent effected by a law which deprived the principal local courts of their former splendour and power, and greatly enlarged the jurisdiction of the superior courts, *Rep. v. 13.*—The court of tithing, the hundred or wapentake courts, the courts of the whole county, and the King's court, succeeded each other in regular gradation, free from clashing jurisdictions, according to the nature and quality of the subject in dispute, and the circumstances of the litigant parties, *ib.*

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**Credit.** Commercial dealings on credit were in ancient times inconsiderable, but the rapid increase of population, wealth, and commerce has given rise to extensive credit, *Rep. v. 17*—The facility of recovering small debts is an inducement to giving credit to families of the working class to an improper extent, *Rep. v. App. 13 B.*—Objection to any system of facilitating credit for sums of 20*l.* or 40*l.*, *ib. 33 B.*—Evidence in favour of checking the facility of credit as bearing on the question of the establishment of new local courts, *ib. 35 B.*—See also *Execution, Writs of.*

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**Criminal Justice.** There is no difficulty in the administration of criminal justice at the sessions by local magistrates, *Rep. v. App. 29 B.*—Its administration before the same magistrates is often distrusted, *ib. 36 B.*

**Cross, Sir John.** (Analysis of his Evidence.)—Is one of the judges of the Court of Review; was formerly professional chairman of the Manchester Court of Requests; the Manchester Court of Requests has been found useful; its jurisdiction might be increased, *Rep. v. App. 10 B.*—Objection to allowing appeals from courts of request; juries are not advisable therein; there should be a general act for regulating courts of request, *ib. 11 B.*—Examination of parties; evils of granting time to defendants; doubts as to abolishing old local courts; abuses incident to the Manchester Court Baron; evils of special pleading in inferior courts, *ib. 12 B.*—It is desirable that costs fairly expended should be recovered; fraudulent debtors may take advantage of the time elapsing between assizes, *ib. 13 B.*—Execution on the body is necessary to the ends of justice, *ib. 14 B.*

**Crowther, T.** (His Answers to Queries.)—Hosier, Nottingham; is in favour of two local courts for the county, *Rep. v. App. 84 a.*

**Cumberland County.** Names of local courts; they are quite satisfactory, *Rep. v. App. 11 A. 12 A.*—Jurisdiction of local courts therein; costs of suit; defects pointed out, *ib. 199 A.*—The local courts at present established are not adequate to the due administration of justice, *ib. 44 a.*

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**Cunliffes, Brooks & Co., Messrs.** (Their Answers to Queries.)—Bankers, Blackburn; a local court of general jurisdiction would be desirable, *Rep. v. App. 21 a.*

**Cunningham, James.** Answers transmitted by Mr. Cunningham, merchant at Bristol, in favour of continuing the existing courts, *Rep. v. App. 47 a.*

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**Dacre, Lord.** Concurrence of Lord Dacre in the answers given to questions circulated by the commissioners, by the clerk of the peace for the county of Hertford, *Rep. v. App. 102 A.*

**Dalton, T.** (His Answers to Queries.)—Deputy clerk of the peace for the county of Glamorgan; opinion in favour of retaining borough courts, *Rep. v. App. 17 A.*

**Damages.** See *Assessment of Damages. Debt or Damages and Costs. Slander. Trial of Actions, 2.*

**Daniel, Thomas.** (His Answers to Queries.)—Merchant, Bristol; the present courts of that city are sufficient, *Rep. v. App. 82 a.*

**Dartmouth Borough.** Extract from a charter (3 Edw. 4.) to the borough of Dartmouth, *Rep. v. App. 27 a.*—Copy proceedings in a suit in the Dartmouth Borough Court, *ib. 24 a.*—Copy of plaintiff's bill of costs in a suit therein, *ib. 26 a.*

**Davenport, J. M.** (His Answers to Queries.)—Clerk of the peace, Oxfordshire; improvement suggested in the jurisdiction and practice of the county courts, *Rep. v. App. 224 A.*

**Davies, Thomas.** (His Answers to Queries.)—Merchant, Bristol; the local courts of Bristol may remain unaltered without detriment to suitors, *Rep. v. App. 97 a. 99 a.*

**Day & Sons, Messrs.** (Their Answers to Queries.)—Bankers, Rochester; suggestions for continuing courts of request where they exist, and establishing others where they do not, *Rep. v. App. 42 a.*

**Deal Local Courts.** Particulars as to local courts in and about Deal, *Rep. v. App. 137 A.*

**Debt.** Short form of plaint that may be used in debt, *Rep. v. 24.*

**Debt or Damages and Costs.** Proposition of the commissioners, that the summons contain the amount of the debt or damages and costs which will be accepted in satisfaction of the claim, if paid before a day to be specified; such offer to be made without prejudice; object of this provision, *Rep. v. 23.*

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**Debtors.** The trouble and expense of prosecuting an action at law affords an inducement to debtors to make a vexatious and fraudulent resistance, *Rep. v. 16, 17*—Honest debtors are not oppressed by a body of creditors; an unfortunate but honest debtor always meets with ample support and protection, *Rep. v. App. 27 B.*

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**Defended Causes.** Proportion of defended causes in the Middlesex County Court, *Rep. v. App. 17 B.*

#### DELAY AND EXPENSE:

1. *Questions Circulated by the Commissioners, and Answers thereto.*
2. *Effects of Delay and Expense.*
3. *County Courts.*
4. *Inferior Courts generally.*
5. *Pontefract Court Baron.*

##### 1. *Questions Circulated by the Commissioners, and Answers thereto:*

Question, whether any and what degree of inconvenience arises from the delay which intervenes between the commencement of a suit in any of the superior courts and a trial at the assizes, or from the expense of prosecuting an action there, or otherwise, *Rep. v. App. 1 A.*

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##### 2. *Effects of Delay and Expense:*

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**Demurrers.** Number of demurrers filed in the Palace Court in the year 1832 which were all for delay, *Rep. v. App. 26 B.*—See also *Pleadings, 6*.

**Denbigh County.** Names and jurisdiction of local courts; expense of proceedings; objections to the practice of the courts, *Rep. v. App. 19 A. 122 A.*—There are no local courts therein except the county court, *ib. 61 A.*

**Deputy Steward (Palace Court).** The deputy steward of the Palace Court sometimes comes down to preside in case of a new trial instead of the steward, where the law is doubtful, *Rep. v. App. 7 B.*

**Derby County.** Names of local courts; extent and amount of their jurisdiction; costs. These courts are generally satisfactory and useful, *Rep. v. App. 91 A. 92 A. 73 A.*

**Deverill, Alderman.** (His Answers to Queries.)—Wine merchant, Nottingham; the establishment of one local court of record recommended, *Rep. v. App. 102 A.*

**Devon County.** The county court is not adequate to the due administration of justice, *Rep. v. App. 10 A. 14 A. 20 A.*—The hundred courts and the borough courts are the only local courts; the former are in disuse and the latter are seldom resorted to, *ib. 48 A. 116 A.*—Jurisdiction of local courts in the county; expense of proceedings; how far they are adequate to the administration of justice, *ib. 126 A. 202 A. 14 A. 24 A. 119 A. 129 A.*—It is desirable to establish one local court of general jurisdiction throughout the county, *ib. 91 A. 123 A.*

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**Dickinson & Sons, Messrs.** (Their Answers to Queries.)—Of Leeds; opinions in favour of there being courts in every market town, *Rep. v. App. 69 A.*

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**Districts.** Proposition, that the whole kingdom be divided into districts, for the purpose of establishing local courts upon an uniform system, *Rep. v. 18*—Large districts recommended for local courts, *Rep. v. App. 19 B.*

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**Drake, Gribble, Marshall & Co., Messrs.** (Their Answers to Queries.)—Bankers, Barnstaple; one local court of general jurisdiction recommended, *Rep. v. App. 20 A.*

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**Dukes, T. F.** (His Answers to Queries.)—Attorney, Shrewsbury; opinions in favour of improving the local courts, and against one local court for the whole county, *Rep. v. App.* 156 A.

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**Duncan, W. M.** Letter from Mr. W. M. Duncan, merchant, of Liverpool, stating that where small debt courts are established they are of great use, *Rep. v. App.* 40 A.

**Durham County.** Regulations proposed to be made in the county court, in order to the speedy and cheap relief of suitors, *Rep. v. App.* 102 A. 103 A.—Local courts within the county, *ib.* 45 A.

**Dyott, J. P.** (His Answers to Queries.)—Steward of the Court of the Honour of Tutbury, &c.; the jurisdiction of the county and local courts should be extended, *Rep. v. App.* 187 A.—190 A.

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**Eales, R.** (His Answers to Queries.)—Clerk of the Peace for the county of Devon; the present county court, new modelled and improved, would be far more beneficial than any new court, *Rep. v. App.* 48 A.

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**Eaton & Cayley, Messrs.** (Their Answers to Queries.)—Of Stamford; recommendations for abolishing the county court, and establishing a court for the whole county or for particular divisions, *Rep. v. App.* 129 A.

**Ecclesiastical Courts.** William I, A.D. 1085, separated the ecclesiastical from the civil part of the local courts, *Rep. v.* 13, *note* (a).

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**Edye, Edmund.** Extract of a letter from Edmund Edye to the clerk of the peace for Shropshire, containing certain returns relative to the borough and lordship courts of Clun, *Rep. v. App.* 107 A.

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**Entering Causes.** Heavy expense of entering cause for trial at assizes, *Rep. v.* 16—Reducing fees on entering causes will diminish expenses in the superior courts, and the necessity of extending the jurisdiction of local courts, *ib.* 19—Costs are greatly enhanced by the large fees paid on entering the cause for trial, *Rep. v. App.* 40 B.

**Equity and Ecclesiastical Courts.** The proceedings therein are so tedious and expensive as to afford no adequate remedy for the recovery of small legacies, *Rep. v.* 19.

**Essex County.** Names and jurisdiction of local courts in Essex, *Rep. v. App.* 155 A.—The county court is adequate to the due administration of justice, and for the most part satisfactory to the public, *ib.* 10 A.—The local courts therein, with the exception of the court of requests, are unsatisfactory, *ib.* 19 A.

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**Evarts, Thomas.** (His Answers to Queries.)—Attorney, Denbigh; opinion in favour of retaining the county court, if amended, *Rep. v. App.* 19 A.

**Everard, W.** (His Answers to Queries.)—Banker, Lynn; alterations suggested as to local courts, *Rep. v. App.* 28 A.—Answers transmitted by Mr. Everard, in favour of local courts, in every hundred; in favour of extending the jurisdiction of local courts of requests, *ib.* 29 A.—In favour of continuing the county and other local courts, *ib.* 30 A.

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#### EXECUTION, WRITS OF:

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2. *Manchester Court of Requests.*
3. *Middlesex County Court.*
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##### 2. *Manchester Court of Requests:*

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*Farwell, George.* (His Answers to Queries.)—Town clerk, Totness; is in favour of re-establishing the county courts and other local courts, but on a different principle than at present exists, *Rep. v. App. 116 A.*

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*Fenton, James.* Letter from Mr. Fenton, merchant, of Leeds, suggesting the appointment of arbitrators in towns, *Rep. v. App. 76 A.*

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*Filing Pleadings* (Palace Court). All pleadings are filed, and any person may take copies of them, *Rep. v. App. 6 B.*

*Fisher, Thomas.* Communication from T. Fisher, sheriff's officer, Manchester, stating that the processes from the inferior courts are intrusted for execution to men of the worst character, *Rep. v. App. 2 c.*

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*Fletcher, C.* (His Answers to Queries.)—Banker, Northallerton; answers to queries in favour of extending the jurisdiction of the county courts, *Rep. v. App. 85 a.*

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*Footner, R.* (His Answers to Queries.)—Town-clerk of Andover; names of local courts in Hampshire, *Rep. v. App. 47 A.*

*Forder & Channell, Messrs.* (Their Answers to Queries.)—Merchants, Southampton; opinions in favour of courts being held every six weeks, *Rep. v. App. 23 a.*

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*Formal Objections.* Provision for preventing mere formal objections which are beside the real merits of the case, *Rep. v. 25.*

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**Fraudulent Removal of Goods.** One defect incident to all courts of limited jurisdiction is the want of sufficient means of executing judgments on goods fraudulently removed into another county to avoid execution, *Rep. v. 9*—When plaintiffs sue for debts of small amount in the superior courts, they run great risk of the defendant removing his property beyond the reach of legal process, *ib. 16*—Proposition, that on affidavit of there being no goods within the jurisdiction, but that there are in another, on certificate of the judgment, an execution shall issue into the jurisdiction where the goods are, *ib. 29*.

**Freeholds.** Proposal, that titles to franchises and freeholds be exempt from the jurisdiction of the proposed local courts, *Rep. v. 18*.

**Fripp & Co., Messrs.** (Their Answers to Queries.)—Merchants, Bristol; opinion in favour of one general court for the city of Bristol and its vicinity, *Rep. v. App. 48 a*.

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**Gaby, Benjamin.** (His Answers to Queries.)—Attorney, Bath; the jurisdiction of the local courts recommended to be extended, *Rep. v. App. 15 A. 16 A.*

**Gainsborough** (Lincolnshire). The local court at Gainsborough is very inefficient, *Rep. v. App. 21 a*.

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**Geary, Thomas.** Letter from Mr. Geary, cheesemonger, Leicester, in favour of a law that would secure the property of an insolvent to his creditors, *Rep. v. App. 58 a*.

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**Gee, H. & T., Messrs.** (Their Answers to Queries.)—Bankers, Boston; recommendation of the establishment of a general local court, *Rep. v. App. 1 a*.

**Gell, F. H.** (His Answers to Queries.)—Clerk of the peace for the county of Sussex; the county court may, with certain modifications, form the basis of an advantageous administration of justice, *Rep. v. App. 3 A. 5 A.*

**Gibbon, John.** (His Answers to Queries.)—Of Ashton-under-Line; amendments that might be made in the county court, *Rep. v. App. 26 A. 27 A.*

**Gibraltar.** See *Real Property*.

**Gibson & Wilson, Messrs.** Letter from Messrs. Gibson & Co. bankers, Kirkby Lonsdale, enclosing answers of their solicitor, and stating that the baronial courts and courts of request have been discontinued, and that the county court is too distant to be much resorted to, *Rep. v. App. 36 a*.

**Glamorgan County.** Names and jurisdiction of local courts, *Rep. v. App. 16 A. 17 A. 144 A. 146 A. 124 a*.—Borough courts, if amended, should be retained, *ib. 16 A. 17 A.*—Courts baron might be revived, and made satisfactory to the public, *ib. 144 A.*

**Gloucester City.** There is a court of conscience for recovery of debts under 40 s. in the city of Gloucester, *Rep. v. App. 45 A.*—See also *Justices, Writ of*.

**Gloucester County.** List of local courts within the county; extent of the jurisdiction; defects pointed out, *Rep. v. App. 21 A. 22 A. 36 A. 45 A. 122 a*.—The Court of Requests for the city of Gloucester and the county court, are the only courts now existing; their jurisdiction should be extended, *ib. 128 A.*

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**Godfrey, E. S.** (His Answers to Queries.)—Clerk of the peace for the county of Nottingham. Opinion in favour of one general jurisdiction, in lieu of the county and other local courts, *Rep. v. App. 10 A.*

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**Goodall, E. V.** (His Answers to Queries.)—Clerk of the Court of Requests, Bath; answers relative to the jurisdiction of proposed local courts, *Rep. v. App. 204 A.*

**Graham v. Browne.** This case referred to (2 Crompt. & Jer. 327), to show the injustice caused by the jurisdiction of the court of requests, in the event of the plaintiff suing elsewhere, *Rep. v. 12, note*.

**Graham, Thomas.** Letter from Mr. T. Graham, of the Coalbrookdale Company, stating the expense of the law, and the uncertainty of its issue, prevent the resort to legal measures for the recovery of debts; some improvement is desirable, *Rep. v. App. 2 a. 3 a.*

*Gravesend*, Local Courts in. Particulars relative to the jurisdiction, practice, costs, &c., of the local courts in the town of Gravesend, *Rep. v. App.* 215 A. 216 A.

*Gregson, H.* (His Answers to Queries.) Solicitor, Lancaster; answers in favour of one local court of general jurisdiction, *Rep. v. App.* 36 a.

*Grey, Samuel & Co.* Messrs. Letter from Messrs. Grey & Co., merchants, Manchester, showing that the expense prevents the recovery of debts under 60 *l.* or 70 *l.*, *Rep. v. App.* 71 a.

*Griffiths, W. H.* One of the commissioners of the Court of Requests at Shrewsbury; observations on questions circulated by the commissioners, showing the abuses of local courts, *Rep. v. App.* 118 a.

*Grojan & Hodgson*, Messrs. (Their Answers to Queries.)—Clerks of the Westminster Court of Requests; remarks relative to the proceedings and practice of that court, *Rep. v. App.* 206 A.

*Guest, Charles.* (His Answers to Queries.)—Clerk of the court of requests, Broseley; one local court of general jurisdiction recommended, *Rep. v. App.* 194 A.

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*Habeas Corpus.* Suggestion, that the plaintiff, instead of the defendant, should have the choice of the court out of which the habeas should issue for the removal of a cause from the Palace Court, *Rep. v. App.* 7 B.—Amount allowed by the Master for a habeas, on removing a cause from the Palace Court, *ib.* 24 B.

*Hackney Map Case.* Proceedings in the Court of Requests for the Tower Hamlets with regard to this case, *Rep. v. App.* 21 B.—23 B.—Statement by one of the commissioners of the Court of Requests for the Tower Hamlets in answer to that of Mr. Starling, in regard to the Hackney Map Case, *ib.* 45 B. 46 B.

*Hale, Sir Matthew.* Extract from the works of Sir Matthew Hale, showing how he came to the conclusion that 10 *l.* was the proper limit of jurisdiction for inferior courts, on account of the altered value of money, *Rep. v.* 14, 15.

*Hale, Lord.* Ten pounds proposed by him as the limit of the jurisdiction for the county court, was equivalent to at least 20 *l.* of present money, which is one reason for proposing it as the limit of jurisdiction of the proposed local courts, *Rep. v.* 18.

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2. Jurisdiction, duration of Suit, and Costs.
3. How far the Courts are Adequate and Satisfactory.
4. Whether subject to Defect or Abuse.
5. Whether they should be continued, or a new system established.
6. As to the proposed Jurisdiction, Practice, &c., if a new Court be established.

## II. Antiquity of Local Courts.

## III. Opinions against the Abolition of Local Courts.

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1. *New Local Courts.*
2. *Manchester Court of Requests.*
3. *Middlesex County Court.*

##### 1. *New Local Courts:*

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**Taylor & Dyson, Messrs.** (Their Answers to Queries.)—Attornies, Diss; answers expressing opinions in favour of local courts, *Rep. v. App. 25 A.*

**Taylor, Thomas.** (His Answers to Queries.)—Managing clerk to Messrs. Alexander, bankers, Manningtree; recommendations for giving magistrates jurisdiction in cases of debts under 10*l.*, *Rep. v. App. 18 a. 19 a.*

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**Terry & Lunn, Messrs.** (Their Answers to Queries.)—Wholesale and retail dealers, Ripon; the extension of the jurisdiction of certain local courts recommended, *Rep. v. App. 116 a.*

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**Tidd, J.** (His Answers to Queries.)—Banker, Gainsborough; answers in favour of the establishment of a local court of general jurisdiction, *Rep. v. App.* 21 a.

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**Tolls.** Proposition that tithes to tolls be exempt from the jurisdiction of the proposed local courts, *Rep. v.* 18.

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**Tolzey Court (Bristol).** Letter from the prothonotary of this court showing the advantages of the proceedings therein, *Rep. v. App.* 95 A. 96 A.

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**Topham, John.** (His Answers to Queries.)—Clerk of the court of requests, Liverpool; answers complaining of the distance of the county court from Liverpool, *Rep. v. App.* 196 A.

**Tottie, Richard.** (His Answers to Queries.)—Merchant, Hull; advantages of one local court of general jurisdiction, *Rep. v. App.* 95 A.

**Tovey, Thomas.** (His Answers to Queries.)—Steward of the hundred court of St. Briavel's, Gloucestershire; answers expressing opinions favourable to extending the jurisdiction of county and local courts, and against a general jurisdiction, *Rep. v. App.* 198 A.

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**Trafford, Trafford.** Letter from Trafford Trafford, chairman of the quarter sessions for the county of Chester, advising that the borough and hundred courts be made subordinate to the sheriff's court, *Rep. v. App.* 59 A.

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**Trevor, J. W.** (His Answers to Queries.)—Prothonotary of the court of record, and town clerk of Bridgwater; the county court, as at present constituted, is very objectionable, *Rep. v. App.* 153 A.

#### TRIAL OF ACTIONS:

1. *Trial in Local Courts of Small Actions brought in the Superior Courts.*
2. *Mode of Proceeding at the Trial.*
3. *In the Manchester Court of Requests.*
4. *In the Palace Court.*

##### 1. *Trial in Local Courts of Small Actions brought in the Superior Courts:*

Question circulated by the commissioners, whether there would be any and what objection to the trial of issues in actions brought in the superior courts, where the cause of action does not exceed a certain amount before the sheriff, or an assessor to the sheriff, at his county court, the court being held at such convenient place or places in the county as may be most convenient for the trial of such cases, with reference to the expense of conveying witnesses or otherwise, *Rep. v. App.* 1 A.—Answers thereto, *ib.* 2 A. *et seq.*; 1 A. *et seq.*

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Regulation proposed, that provision be made for the trial of causes at such places as shall be best accommodated to public convenience, and shall most effectually exclude the evil of expense in the conveyance and maintenance of witnesses, and the detention of parties, jurors, and witnesses, at a distant place of trial, *Rep. v. 18*—Where all the causes which have arisen in a period of six months in an extensive and populous district are brought to trial at the same place, their number renders the time of trial uncertain, *ib.*—The delay occasioned by trials at the assizes may be reduced by sending issues under 60 *l.* to be tried in the local courts, on certain conditions, *ib. 19*—On summons before a judge, he should have discretionary power to order a cause commenced in the superior courts to be remitted to the local courts for trial, *Rep. v. App. 36 B.*—The Judges in London should have the power of allowing causes to any amount of a certain description to be remitted for trial before the local tribunals, *ib.*

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**Turnbull, W.** (His Answers to Queries.)—Wholesale and retail dealer, Alnwick; answers in favour of a local court of general jurisdiction, *Rep. v. App. 39 A.*

**Turner, John.** (His Answers to Queries.)—Of Birmingham; there should be two courts for recovery of debts under 20 *l.*, one at Birmingham the other in the county town, *Rep. v. App. 83 a.*

**Tuson, Henry.** (His Answers to Queries.)—County clerk of Somerset; advantages of extending the jurisdiction of the county court, *Rep. v. App. 27 A. 28 A.*

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**Under-Sheriffs.** Many under-sheriffs are competent, in point of legal knowledge and experience, to preside in the sheriffs' court; but each remains in office but for a short space, during which his attention is engaged by other important official avocations, *Rep. v. 6*—The high sheriff's right to appoint his own under-sheriff should not be interfered with, *Rep. v. App. 30 B.*—Trial before a legal assessor of a borough court, preferred to trial before an under-sheriff, *ib. 36 B.*—In small counties, and in some of the Welch counties, the under-sheriffs might act as assessors, *ib. 41 B.*—The under-sheriffs are, generally speaking, very well-informed men, and the most respectable men in the county, *ib.*

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**Wailes, W.** (His Answers to Queries.)—Attorney, Leeds; answers suggesting various modes of practice for courts of local jurisdiction, *Rep. v. App. 77 A.*

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**Waldron, Walters & Co.** (Their Answers to Queries.)—Bankers, Frome; one local court of general jurisdiction recommended, *Rep. v. App. 2 a.*

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**Walford, W.** (His Answers to Queries.)—Town clerk of Banbury; answers expressing opinions in favour of establishing one local court throughout the county of Oxford, except where courts have been established by charter, and properly regulated in local jurisdictions, *Rep. v. App. 62 A.*

**Walker, Ascroft & Monk, Messrs.** (Their Answers to Queries.)—Attornies, Preston; are in favour of one local court of general jurisdiction throughout the county of Lancaster, *Rep. v. App. 53 A.*

**Walker, John.** (His answers to Queries.)—Confectioner, York; advantages of shortening proceedings and lessening the expense in local courts, *Rep. v. App. 71 a.*

**Walker, W.** (His Answers to Queries.)—Of Arundel; is in favour of establishing local courts, *Rep. v. App. 145 A.*

**Walker, William.** (His Answers to Queries.)—Clerk of the court of requests, Spilsby; suggestions for the establishment of one local court of general jurisdiction, *Rep. v. App. 174 A, 176 A.*

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**Ward, Alfred.** (His Answers to Queries.)—Clerk of the court of ancient demesne for the manor of Havering-atte-Bower; opinions against the establishment of local courts, *Rep. v. App. 206 A.*

**Ward, Brettell & Ward, Messrs.** (Their Answers to Queries.)—Wholesale dealers, Woodstreet, Cheapside; are in favour of assimilating the practice of small debt courts, particularly in the metropolis, and in favour of establishing courts similar to the Palace Court, *v. App. 16 a. 17 a.*

**Ward, C. J.** (His Answers to Queries.)—Town clerk, Maidenhead; answers, stating that courts for recovery of small debts are a serious evil, *Rep. v. App. 167 A.*

**Ward, J. R.** Letter from J. R. Ward, attorney, Durham, containing a list of alterations proposed to be made in the county court, *Rep. v. App.* 102 A. 103 A.

**Warwickshire.** Names of local courts in the county; their jurisdiction; they are inadequate to the due administration of justice, *Rep. v. App.* 142 A. 164 A. 221 A. 77 a. 82 a. 83 a. 105 a.—Jurisdiction of the hundred courts in this county, *ib.* 118 A.—The proceedings therein are unsatisfactory on account of the expense, *ib.* 45 a.

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**Watts, Edward.** (His Answers to Queries.)—Town clerk of Hythe; observations relative to local courts in the county of Kent, and the Cinque Ports, *Rep. v. App.* 120 A.

**Watts, Wyatt & Co., Messrs.** (Their Answers to Queries.)—Bankers, Stroud; advantages of establishing a local court of general jurisdiction, *Rep. v. App.* 122 a.

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**White, George.** (His Answers to Queries.)—Attorney, Grantham; the local courts, amended, would be preferable to one local court of general jurisdiction, *Rep. v. App.* 195 A.

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**Williams, D.** (Answers to Queries.)—Attorney, Pwllheli; probable advantages of abolishing the county court as a court for the recovery of debts, and establishing one local court of general jurisdiction throughout the county, *Rep. v. App.* 92 A.—95 A.

**Williams, G. E.** (His answers to Queries.)—Deputy town clerk, Tewkesbury; the establishment of local courts recommended, and defects in the present practice pointed out, *Rep. v. App.* 36 A. 37 A.—Further answers relative to the power of imprisonment by judges of local courts, and as to preliminary imprisonment before hearing in the Insolvent Court, *ib.* 54 A.

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**Williams & Rowland, Messrs.** (Their Answers to Queries.)—Bankers, Neath, Glamorgan-shire; answers containing statements as to existing legal proceedings, with suggestions as to the proposed local courts, *Rep. v. App.* 123 a.—127 a.

**Willington, Thomas.** (His Answers to Queries.)—Town clerk of Tamworth; opinions in favour of continuing both the county and hundred courts, but extending their jurisdiction, *Rep. v. App.* 118 A.

**Willoughby, Benjamin Edward.** (Analysis of his Evidence.)—An attorney of the Palace Court, being also admitted in all the superior courts; practice of the court; costs out of pocket; number and value of causes; number of attornies and counsel; objection to throwing the court open, *Rep. v. App.* 5 B.—There are no vacations; removal of causes; difference between the Palace Court and the King's Bench as to costs, *ib.* 6 B.—The court is useful at present; complaints as to bailiffs; jurisdiction of the court; bail on writs of error does not extend to this court; impartiality of the judges, *ib.* 7 B.—Copies of various bills of costs, *ib.* 8 B. 9 B.

**Wills, William.** (His Answers to Queries.)—Attorney, Birmingham; suggestions for the establishment of one or more courts of general jurisdiction throughout the county, *Rep. v. App.* 221 A.

**Wilmot, Sir E. Eardley, Bart.** (His Answers to Queries.)—Chairman of the quarter sessions for the county of Warwick; opinions in favour of establishing one court of general jurisdiction throughout the county, *Rep. v. App.* 7 A.

**Wilson, Robert.** (His Answers to Queries.)—Draper, Stockton-on-Tees; a summary mode of recovering payment of debts is wanted, *Rep. v. App.* 45 a.

**Wilson, W. W. C.** Letter from W. W. C. Wilson, chairman of the quarter sessions for Westmorland, stating the number of local courts in the county, *Rep. v. App.* 20 A.

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**Wilton, Henry H.** (His Answers to Queries.)—Under-sheriff of the city of Gloucester; answers suggesting amendments in the practice of the county courts, instead of establishing local courts, *Rep. v. App.* 45 A. 46 A.—Is in favour of extending the jurisdiction of the county court and court of requests for the city, *Rep. v. App.* 128 A.

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**Windsor Borough Court.** This court was re-opened by mandamus; but few causes were tried there, and it has fallen into disuse, *Rep. v. App.* 38 B.

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**18. Courts of Common Law.** 1834.—Copy of the Sixth Report made to His Majesty by the Commissioners appointed to inquire into the Practice and Proceedings of the Superior Courts of Common Law; dated 2 May 1834. (263.)  
Sess. Vol. XXVII. p. 449.

[N. B.—In this Abstract, the Figures following *Rep. vi.* refer to the Page of the Sixth Report, and those following *Appx.* to the Appendix to the same.]

#### ABSTRACT.

##### ADMISSIONS OF LAW STUDENTS, AND CALLS TO THE BAR.

Statement by the Commissioners that the four inns of court, the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn, severally enjoy the privilege of conferring the rank of barrister at law, this rank constituting an indispensable qualification for practice in the superior courts; the origin of this privilege of the inns of court is involved in considerable obscurity, *Rep. vi.* 5—There is no instance in modern times in which the judges have interfered with the internal regulations of the different societies, though there are several in which they have acted as visitors, upon appeals to them from decisions of the benchers respecting calls to the bar, *ib.* 6—Reference to the case of *The King v. The Benchers of Lincoln's Inn* (4 Bar. & Cres. 855). *ib.*

O.2.

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Regulations



*Regulations and Practice in force in the different Inns of Court, relative to the Subjects referred to the Commissioners under the present Inquiry.*

1. *As to the Admission of Students.* Written statements and documents necessary to be produced by a candidate before he can be admitted a member; no person is admitted without the approbation of a benchers, or of the benchers in council assembled; bond necessary to be signed for the payment of the dues; commons necessary to be kept before any applicant can take out a certificate as special pleader, conveyancer, &c. At the Inner Temple and Gray's Inn, no person is admissible while engaged in trade; rule at the Inner Temple, since the year 1829, that no person shall be admitted without a previous examination in classical attainments, and the general subjects of a liberal education, *Rep. vi. 6.*
2. *As to the Call to the Bar.* No person in priest's or deacon's orders can be called to the bar, nor any person while he is on the roll of attornies, solicitors, or proctors; commons necessary to be kept; sum that it is requisite a student must deposit with the treasurer of the society, to be returned without interest on his being called to the bar; a candidate must have attained the age of 21; the call to the bar is by an act of the benchers in council or parliament, &c., assembled; posting of the application in the hall; application necessary to be made to a master of the bench, to move for the admission of a candidate; at the Inner Temple, Middle Temple, and Lincoln's Inn, no attorney, solicitor, or proctor, can be admitted to commons until his name shall have been struck off the roll; in Lincoln's Inn the applicant must read certain exercises at the bar table; the barristers at that table having the power of rejection, subject to an appeal to the benchers; rule at Lincoln's Inn that no person in trade is permitted to do exercises to enable him to be called to the bar; prohibition as to persons who have been clerks to barristers, conveyancers, &c., *Rep. vi. 7.*
3. *As to the Case of Rejection upon an Application to be admitted Student, or to be called to the Bar.* If a person be refused admission as a student, he has no means of bringing under revision the propriety of rejection; a certificate of the rejection is transmitted to all the other societies; in cases where any of the societies refuse to call a person to the bar, the benchers will hear him personally or by counsel, and allow him to give evidence; he has also a further appeal to the Judges, *Rep. vi. 7, 8.*

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Sess. Vol. XLVI. (314.) p. 105.

[N.B.—In this Abstract, the Figures refer to the Page of the Report.]

ABSTRACT.

COURTS OF KING'S BENCH AND COMMON PLEAS.

Statement by the Commissioners, that preparatory to the settlement of new tables of fees, they have felt it necessary to advert to the existing establishments of the different courts; the comparative expense of maintaining such establishments; and the offices of which the duties were discharged by deputy, or which, by the efflux of time or the changes in the practice of the Courts, have become nearly sinecures, 1.—Table showing the number of officers employed in each of the three superior courts for the performance of analogous duties, as well as the present expense in each of the Courts, showing a much greater expense, and larger number of officers in the King's Bench and Common Pleas than in the Exchequer Court, *ib.*—Conclusion arrived at by the Commissioners, that there is no good reason for continuing the wide difference in the number and establishment of officers in the different courts, *ib.*—It would be highly advantageous to the suitors and the public if the establishment could be rendered uniform, and regulated upon one common and fixed principle, 2.

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[N.B.—In this Index the Figures following *Rep.* refer to the Page of the Report; *Special Rep.* to the Special Report; and *App. A, B, C.* and *D.* to the Appendices.]

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2. In particular Dioceses and Courts.
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#### CHURCH RATES:

1. Generally.
2. Proceedings for enforcing Church Rates.
3. Amendments in the Law suggested.

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1. *Mode of examining Witnesses in the Ecclesiastical Courts.*
2. *How far such mode is Efficient; Comparison with the mode of Examination in the Court of Chancery.*

##### 1. *Mode of examining Witnesses in the Ecclesiastical Courts:*

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2. *Whether desirable to Abolish them.*

1. *Number and Jurisdiction of Courts of Peculiars:*

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2. *Great Length to which they run; whether practicable to shorten them.*
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The Acts on which the existing periods of limitation chiefly depend are 32 Hen. 8, c. 2; 21 Jac. 1, c. 16, and 4 Hen. 7, c. 24, *Rep. i.* 39—Proposition, that such parts of the statutes 4 & 5 Hen. 7, c. 24; 32 Hen. 8, c. 2; 21 Jac. 1, c. 16, and 4 & 5 Anne, c. 16, as interfere with the regulations proposed, be repealed, *ib.* 77—Reference to the Act 32 Hen. 8, c. 2, as to limitation of actions, *Rep. i. App. Taunton* 106—Instances in which the statute 21 Jac. 1, c. 16, might be extended with advantage, *ib.*

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All the most oppressive and burthensome consequences resulting from the doctrine of tenures were removed by Act 12 Car. 2, c. 24, *Rep. i. App. Jones* 213.

Proposition, that the statutes 39 & 40 Geo. 3, c. 56, and 7 Geo. 4, c. 45, be repealed, *Rep. i.* 73—The Act 39 & 40 Geo. 3, c. 98, requires alteration and explanation, *Rep. i. App. Brooke* 200.

The statute 54 Geo. 3, c. 168, as to execution of deeds and attestation of witnesses, should be extended and rendered prospective, *Rep. i. App. Taunton* 103.

Act 7 Geo. 4, c. 45, repealing former Act; 39 & 40 Geo. 3, c. 56, relative to money to be laid out in land, *Rep. i.* 30.

See also *Local and Public Acts.*      *Sheriffs.*

*Addison, Thomas Batty.* Answers by Mr. T. B. Addison, of Preston, to questions circulated by the commissioners on the subject of tenures, *Rep. i. App.* 145—Descent, 146—Dower 147—Curtesy, *ib.*—Alienation by deed, *ib.*—Settlement, 148—Fines and recoveries, 149–151—Limitation of action and prescription, 151–153.

Also, communication containing general observations on the law of real property, and offering suggestions for the amendment of particular parts, *Rep. i. App.* 458–469.

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**Burton v. Forester.** There should be a legislative enactment, that in cases like that of *Burton v. Forester*, a fine or recovery suffered by a preceding tenant, should not affect the devises of a remainder man or reversioner in fee, *Rep. i. App. Butler* 120.

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**Chattel Interests.** If a chattel interest in land be claimed, where the claim is under a will or conveyance or entail, an adverse possession of twenty years is an absolute bar, *Rep. i. 41*—Recommendation of the commissioners, that with respect to chattel interests in land, the period of limitation should begin to run from the time when the right of entry has arisen, and might have been acquired by taking out letters of administration, *ib.* 48—Proposition to that effect, *ib.* 79, 80—Advantages possessed by equitable chattel interests; they were treated with neglect by our ancestors, and are reserved to become the subject of laws framed in an enlightened age, *Rep. i. App. Senior* 590.

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**Church.** There is no statute of limitations for the church, *Rep. i. 40*—Recommendation that none of the propositions of the commissioners shall affect the church, *ib. 81*—In the canon law forty years is the prescription against the church, *Rep. i. App. Butler 121*—If there were a statute of limitation for the church, it would be better for the parochial clergy, and religion, *Bell 247*—A statute of limitation for the church would be of service by ascertaining their rights, and preventing litigation, *Walters 385*—Provisions that should be contained in an Act for limitation of actions respecting advowsons and the estates of ecclesiastical persons, *Tyrrell 505.*

Question circulated by the commissioners as to whether there can properly be any statute of limitations for the church, *Rep. i. App. 96.*

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**Church Lands.** Unless there be some restriction against the taking of fines, copyholds will never be abolished in church manors; the greater number of manors in which there are copyholds for lives belong to ecclesiastical lords, *Rep. i. App. Tyrrell 310.*

**Church Manors.** It is particularly important that in church manors the power should be given to enable copyholders to lease without licence from the lord, *Rep. i. App. Walters 371.*

**Church Property.** Church property should be held sacred, and the clergy protected in the enjoyment of their rights and possessions, but the clergy would be benefited by regulations which would lessen litigation regarding tithes, *Rep. i. 54*—Means are being taken to ascertain whether a statute of limitations may not be framed for the church, and whether church property may not be rendered more beneficial both to its possessors, and the community, *ib. 60*—By amending the laws for obliging the incumbent to make proper terriers, and by greater vigilance on the part of the bishops, the enjoyment of church property might be effectually secured to it, *Rep. i. App. Tyrrell 334*—Manner in which the various Acts for public improvements have operated very injuriously to the diminution of church property, *Morley 352*—In enfranchising manors held of the church, the quit rent should be a corn rent, and if there be any other compensation, it should be land and not money, *ib. 353.*

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Except in Italy, Spain, and Portugal, the property of the church is very inconsiderable, and the clergy receive stipends instead of possessing landed property and tithes, *Rep. i. App. Walters 385.*

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*Clerk of Recoveries.* Number of documents necessary to be left at this office on suffering a recovery, *Rep. i. 25.*

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*Clowes, William.* Answers to questions on the subject of tenures, *Rep. i. App. 153*—Descent, 154—Dower, *ib.*—Curtesy, 155—Alienation by deed, *ib.*—Settlement, *ib.*—Fines and recoveries, 156—Limitation of action and prescription, 157.

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*Code Napoleon.* The "Titre Préliminaire" to the Code Napoleon referred to as a model for regulations on the subject of tenures, *Rep. i. App. Humphreys 249*—Endless inconvenience and difficulty arise on the construction and application of the new laws, *Ker 294.*

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*Cohairs.* Objection to giving power to one of the coheirs of gavelkind lands to convey on behalf of himself and others, *Rep. i. App. Coote 337*—In cases of trust estates in gavelkind, it would be better that one heir should convey rather than the estate should descend as at common law, *Morley 350*—Evidence in favour of one heir conveying trust estates in gavelkind, *Walters 367, 368; Harrison 386.*

*Coke, Lord.* Lord Coke states an instance of a living of his own in which a parson had been incumbent above 50 years, *Rep. i. 53.*

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*Common Law Courts.* In the common law courts there should be such officers and such proceedings for the taking and examination of accounts, as would prevent there being two different tribunals for deciding the legal and equitable interests to the land, *Rep. i. App. Pemberton 131.*

*Common Pleas Court.* Fines and recoveries of lands in England are levied and suffered in the Court of Common Pleas; different offices through which they pass in that court, *Rep. i. 25*—Recommendation, that the Court of Common Pleas should retain the power of making orders respecting the examination of married women, *ib. 38*—Proposition to this effect, *ib. 77.*

*Common Rights.* Suggestions for amending the law allowing the release of common rights, *Rep. i. App. Walters 375.*

*Communications.* Various communications have been received from different parts of the country in answer to a circular; some of them are subjoined in the appendix, *Rep. i. 6.*

*Commutation of Tithes.* It is very desirable that a power of commutation for a rent or money, under proper restrictions, should in all cases exist, *Rep. i. App. Walters 385*—Suggestions in favour of a commutation for tithes, *Senior 413.*

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*Complexity and Obscurity of the Law.* After all the amelioration of which the law of real property in this country is susceptible, the public must not expect that it can be rendered free from complexity and obscurity, *Rep. i. 9.*

*Compositions Real.* Unreasonableness of the doctrine that a composition real cannot be presumed from any length of uninterrupted usage, and cannot be established without evidence of a deed which, supposing it to have existed, was most probably executed before the dissolution of the monasteries in the reign of Hen. 8., *Rep. i. 54, 55*—Propositions for amending the law, *ib. 80.*—Proposition, that where tithes belong to lay impropriators a court or jury shall be permitted from long usage to presume a composition real,

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without evidence of any deed, *Rep. i. 55. 80*—By the old law established in favour of the church, no layman was capable of holding tithes, except by means of a composition real, which gave to the ecclesiastical owner a supposed equivalent, *ib. 55*.

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*Composition for Tithes.* All clergymen should have power to compound for their tithes for one year, and such composition should be apportioned between them and their successors, *Rep. i. App. Bell 234*—Necessity for there being a composition for tithes, particularly small tithes, such as gardens and milk, *ib. 247*—A real composition for tithes should be pleaded and proved, *Barnes 437*.

*Compulsory Register.* The proposed registry need not be compulsory, *Rep. i. App. Tyrrell 531*.

*Conditions.* It would be advisable to enact that conditions might be released in part, *Rep. i. App. Sidebottom 277*—Several of the laws relating to conditions should be considered and amended, *Tyrrell 485*—State of the law with regard to the conditions of defeasance, and amendments proposed, *Beaumont 612*.

*Confirmation.* A fine will operate as a confirmation of all prior defeasible estates or charges made by the party levying it, *Rep. i. 21*—Similar effect of a recovery, *ib. 22*.

*Confusion of Titles.* Answers to the objection to a register on account of the confusion of titles, *Rep. i. App. Tyrrell 529*.

*Consolidation of Livings.* Inconveniences resulting from the state of the law respecting the consolidation of livings under 37 Hen. 8; amendment proposed, *Rep. i. App. Coote 348*.

*Construction of Deeds, Wills, &c.* The numerous questions which arise upon the construction of wills, and the frequent instances in which by an adherence to certain technical rules, never understood but by lawyers, the intention of the testator, which the courts always profess to observe, is completely defeated, are a reproach to our law, *Rep. i. 58*—How far some amendments may be proposed in the rules for the construction of wills, in cases in which experience teaches that the legal interpretation of certain forms of expression is at variance with the sense in which those forms are ordinarily used, whereby litigation may be diminished, and there may be a greater probability of the testator's intention being effectuated, *ib. 59*—It would be very mischievous, and cause a great increase of litigation, if deeds were construed as wills are now, upon the supposed intention of the parties, *Rep. i. App. Coote 340*—Titles will be better secured by amending the rules of law respecting the construction of instruments, particularly those relating to wills, and better regulating the decision of the questions which arise upon them, *Tyrrell 515*—The construction of wills and deeds might be put upon the same footing, *Whincop 641*.

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*Constructive Notice.* Proposition, that all constructive notice be abolished, *Rep. i. App. Measure 606*.

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*Continental Codes.* Doctrine of the continental codes as to limitation and disabilities, *Rep. i. App. Humphreys 268*.

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**Contingent Estates.** Suggestions with regard to contingent estates in wills, *Rep. i. App. Sidebottom* 279—Amendments required in the law with regard to the destruction of contingent estates, *Ker* 295—Evils in copyholds of the incapability of legally passing contingent estates, except the owners be married women, *Walters* 369—Contingent estates should be capable of disposition, *Tyrrell* 487—Proposition for amending the law as to contingent estates; observations thereon, *Bacon* 599.

**Contingent Interests.** Recommendation that contingent and executory interests should be transferable at law, *Rep. i. 31*—It would be advantageous to take away certain contingent and executory interests in land, what can now be legally created by deed, but are not allowed to pass from one to another, or only in equity or by indirect shifts, *ib.* 57—Cases referred to, showing the state of the law as to passing contingent interests, *Rep. i. App. Taunton* 102—Copyhold tenants should be allowed to pass all contingent interests, *Ker* 298—Disadvantage arising with respect to copyhold property from the want of power to convey contingent and executory estates not in the seisin, *Tyrrell* 309—Manner in which the rule of the inability to pass at law, possibilities and contingent interests, may be got rid of, *Senior* 589.

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**Coparcenary.** Suggestions as to property descending according to the rule of coparcenary, *Rep. i. App. Tomlinson* 189.

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**Copyhold Courts.** Question, whether for the purpose of surrenders and admittances, a copyhold court might continue to be held by the steward, although there should not be two copyhold tenants, and that surrenders and admittances at a court held by the steward should be good, although there should be no attendance of copyhold tenants, *Rep. i. App. 89*.

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**Copyhold Fine.** The stat. 21 Jac. 1, c. 16, might be extended to cases of copyhold fine, *Rep. i. App. Taunton* 106.

**Copyholders.** Disadvantages of the restricted interests and limited powers of copyholders, as compared with freeholders, *Rep. i. App. Walters* 369.

**COPYHOLDS:**

1. *Generally.*
2. *Principal Advantages of Copyhold Tenure.*
3. *Disadvantages attending such Tenure.*
4. *How far the Abolition of Copyholds is practicable.*
5. *Suggestions for amending the Law of Copyholds.*
6. *Questions circulated by the Commissioners on the subject, with Answers thereto.*

1. *Generally:*

In recovery of copyholds, most of the precautions necessary as regards recoveries, are unnecessary, *Rep. i. 25*.—The statute 11 Hen. 7, c. 20, has been held not to extend to copyholds: many questions have arisen upon it, *ib. 27*.—Though copyhold lands may be passed by a will made before the acquisition of them, yet some interests in copyhold lands are not devisable, *ib. 58*.

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2. *Principal*



## COPYHOLDS—continued.

2. *Principal Advantages of Copyhold Tenure :*

The principal advantages of copyhold tenure consist in the notoriety and cheapness attending the alienation of it ; its disadvantages do not operate very widely, *Rep. i. App. Taunton 99.*

3. *Disadvantages attending such Tenure :*

The division of interest in the soil between landlord and tenant, arising from copyhold tenure, obstructs improvement, and is a frequent source of litigation, *Rep. i. 56*—There are no advantages attending copyhold tenure ; the obvious disadvantage is the uncertainty of all copyhold customs, proved as they are by imperfect entries, and ignorant or careless stewards, *Rep. i. App. Lawes 110*—Disadvantages of copyhold tenure pointed out, *Dixon 182 ; Weatherby 218*—Difficulty, in many instances, of distinguishing freehold and copyhold land, *Tyrrell 309 ; Senior 404 ; Gatty 627*—More questions have arisen upon copyhold than upon freehold titles, *Morley 351*—Evils of the vagueness of description of copyhold lands, which makes it impossible to distinguish freehold from copyhold, *Harrison 386*—Confusion occurs where copyholds of different manors have long been held by one proprietor, *ib. 396.*

4. *How far the Abolition of Copyholds is practicable :*

Copyhold lands should devolve in the same mode of descent, be subject to the same charges, alienable in the same manner, and be altogether placed on the same footing as freehold lands, *Rep. i. App. Butler 114*—Copyholds should be subject to all rules incident to freeholds of inheritance, *Brooke 197*—It will be found a most unwieldy task to convert all the lands now held by copy of court roll, into free and common socage ; the attempt will create alarm and excitement, without producing adequate good, *Jones 213*—Copyhold and customary estates of inheritance, must be treated in a way perfectly distinct from copyholds grantable for lives, *Barnes 416.*

Copyholds may be discontinued where the tenant is entitled to timber and mines, and may commit waste, *Rep. i. App. Tyrrell 481*—It is desirable, but feared to be impracticable, to abolish other copyholds, *ib.*—Copyholds are diminishing, and their gradual extinguishment might be facilitated, *ib.*—Facilities might be given for enfranchisement, and in course of time the final abolition might be effected, *Whincop 641.*

5. *Suggestions for Amending the Law of Copyhold :*

Where the tenure remains, some alterations may be introduced, by which its inconveniences may be mitigated, *Rep. i. 56*—Suggestions for the amendment of the law with regard to copyholds, *Rep. i. App. Pemberton 127 ; Harland 449 ; Arlington 615 ; Atkinson 617, 618 ; Brooke 618, 620 ; Dawson 626 ; Seymour 633*—Suggestions showing the extent to which care is requisite in the conversion of customary and copyhold tenure, *Clowes 154*—Suggestions for “An Act to remove doubts and difficulties affecting the disposition of certain copyhold estates by will,” *Harland 451*—Observations upon copyholds ; provisions for facilitating enfranchisement, *Addison 464*—Means suggested of removing some of the inconveniences of copyholds previous to their total abolition, *Tyrrell 482.*

6. *Questions circulated by the Commissioners on the subject, with Answers thereto :*

Query as to what are the principal advantages and disadvantages of copyhold tenure, as compared with free and common socage, *Rep. i. App. 88.*

Answers, stating advantages and disadvantages, *Rep. i. App. Peake 107 ; Butler 114 ; Pemberton 127 ; Addison 145 ; Clowes 153 ; S. Turner 161 ; Fonnereau 205 ; Jones 213 ; Weatherby 219 ; Bell 229 ; Humphreys 254 ; Sidebottom 272, 273 ; F. Turner 287 ; Ker 297 ; Tyrrell 309 ; Coote 338 ; Morley 351 ; Walters 369 ; Harrison 386 ; Senior 404 ; Barnes 416*—Answers showing that there are no advantages ; disadvantages stated, *Lawes 110 ; Park 168 ; Capron 170-173 ; Dixon 182 ; Brooke 197 ; Morley 351.*

General answer to various questions, showing the difficulty of enfranchising copyholds, *Jones 213 ; Weatherby 220.*

Question as to whether it is desirable that all lands held by copy of court roll, should be held in free and common socage, and that all lay fee should be held by one tenure, *Rep. i. App. 88.*

Answers showing that it is not desirable, *Rep. i. App. Taunton 99 ; Barnes 416*—Answers showing that it is desirable, *Lawes 110 ; Butler 114 ; Addison 145 ; Clowes 153 ; S. Turner 161 ; Park 168 ; Dixon 182 ; Brooke 197 ; Fonnereau 206 ; Weatherby 220 ; Bell 229 ; Humphreys 254 ; Sidebottom 273 ; F. Turner 287 ; Ker 297 ; Tyrrell 309 ; Coote 338 ; Morley 351 ; Walters 369 ; Senior 404.*

Question, whether in all cases of copyhold and customary estates which pass by surrender, entails should be barrable by surrender only, *Rep. i. App. 94.*

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6. *Questions circulated by the Commissioners on the subject, &c.*—continued.

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**Corn Rents.** In every case of rent taken as compensation, it should be a corn rent, *Rep. i. App. Turner* 161.

**Corporations.** Corporations should not be allowed more than the usual period of limitation, *Rep. i. App. Tyrrell* 503—Corporations should be enabled to convey lands by a conveyance deriving its effect from the Statute of Uses, *Patch* 592.

**Costs.** Enormous amount of costs incurred on fines and recoveries; large portion thereof paid for fees and stamps, *Rep. i. 25, 26*—In actions claiming the remainder or reversion, the court should have considerable discretion as to costs; *primâ facie*, the plaintiff should receive none, and perhaps should pay the defendant's, unless the judge certified, *Rep. i. App. Bell* 241.

**Counterpart Leases.** Provision should be made to facilitate proof of the execution of counterpart leases, where the lessee's estate is sought to be impeached by the remainder man, *Rep. i. App. Weatherby* 223.

**Counties.** For each county there must be a distinct fine or recovery; conditions on which distinct owners of separate lands in the same county are allowed to join in one fine, *Rep. i. 26*—Objection to the inconvenience and additional expense occasioned to parties by having to levy or suffer more than one fine or recovery, if their lands are in more than one county, *ib.* 30.

**Counties Palatine, Courts of.** Fines and recoveries may be levied and suffered in the courts of the counties palatine, *Rep. i. 26*—A fine being levied, or recovery suffered, in the Common Pleas, of lands in Wales or in a county palatine, is absolutely void, *ib.* 29.

**Country Solicitors.** Country solicitors sometimes purchase estates upon the speculation of rejecting the title, and obtaining costs by discovering some defect, unless they find some other person to buy them at advanced prices, *Rep. i. App. Tyrrell* 326.

**Courts.** See *Copyhold Courts.* *Manor Courts.*

**Courts of Equity.** In courts of equity the rule is generally understood to be established, that after an adverse possession of twenty years, no relief can be given, *Rep. i. 41*.

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**Courts of Justice.** Courts endeavour to evade the rules of construction by exceptions, *Rep. i. App. Tyrrell* 551—Suggestions as to the courts in which questions of real property should be decided, *ib.* 565—Suggestion for the establishment of a court for the special consideration of real property questions, *Senior* 590.

## COVENANTS:

1. *Generally.*
2. *Covenants to produce Deeds.*
3. *Covenants to stand seised to Uses.*
4. *Covenants for Title.*

1. *Generally:*

The proposed enactments with a view of not preventing courts from enforcing, on equitable principles, covenants or agreements of husbands, should not bar the right to dower, *Rep. i. 18. 70*—Present system as to covenants; suggestions as to implied covenants, *Rep. i. App. Clowes 160*—Suggestions with regard to covenants running with the land, *Barnes 27; Addison 463*—Necessity for covenants being inserted at length in deeds, *Tyrrell 507*.

2. *Covenants to produce Deeds:*

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*Coventry, Thomas.* Suggestions by Thomas Coventry, of Lincoln's-inn, for reducing the period of title from 60 to 30 years, and for the gradual abolition of attendant terms, *Rep. i. App. 604*.

*Coverture.* Recommendation of the commissioners, that coverture should continue as a bar to prescription, *Rep. i. 44*—Proposition accordingly, *ib. 78*—The disability of coverture should be abolished altogether, *Rep. i. App. Turner 293*.

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**Crown Debtors.** Impediment occasioned to the transfer of real property from the unlimited lien on all land belonging to Crown debts; a plan under consideration for remedying the inconveniences, *Rep. i.* 59—The titles of those who are under liabilities to the Crown are unmarketable, *Rep. i. App. Harrison* 403.

**Crown Debts.** Crown debts give rise to insuperable difficulties; they should be clearly defined and registered, *Rep. i. App. Clowes* 160—The Act 25 Geo. 3, in respect of sales by the Exchequer to enforce Crown debts, does that which is proposed for other cases, *Humphreys* 263—The advantages of exemption from Crown debts and judgments might be communicated to freehold land; copyhold lands should not by enfranchisement be made liable thereto, *Sidebottom* 273—Danger to titles arising from the present law as to Crown debts, *Hordern* 446—Necessity for the establishment of a general registry of all specialty debtors and accountants to the Crown, *ib.* 447—Necessity for inquiries respecting Crown debts; difficulties in the way of inquiries, *Tyrrell* 517—Suggestions as to registering Crown debts and quietus, *ib.* 536.

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**Curtesy.** Present law of curtesy; it is free from the inconveniences attendant upon dower; it has given rise to few complaints, and there is no strong reasons for altering it, *Rep. i. 19*—Propositions in detail for amending the law, *ib. 70, 71*—The proposed alterations as to curtesy should not extend to gavelkind lands, or borough English lands, or to copyhold or customary lands, *ib. 20*—Proposition to this effect, *ib. 71*.

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**Customs of Manors.** Difficulties arising, in some cases, in ascertaining the customs of manors, *Rep. i. App. Butler 114; Tyrrell 309; Walters 369; Senior 404*—Customs should not be left out of the Statute of Limitations; the time of legal memory as to them ought to be shortened, *Bell 246*—Difference between general customs and private rights depending on usage, *ib. 247*.

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*Debts.*

**Debts.** The non-liability of copyhold property to the debts which affect freeholds, is an advantage to the copyholder, but not to the public, *Rep. i. App. Walters* 369—Consideration of the subject of debts as a charge upon real estate, *Addison* 464—Propositions relative to the liability of estates to debts; observations thereon, *Bacon* 603—Suggestions for making copyholds liable to debts, *Barnes* 418; *Senior* 590; *Measure* 606; *Perry* 609; *Richardson* 633; *Weatherby* 636. 640; *Whincop* 641.

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#### ENFRANCHISEMENT OF COPYHOLDS:

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##### 2. Proposals and Suggestions on the subject.

##### 3. Questions circulated by the Commissioners on the Enfranchisement of Copyholds, and Answers thereto.

##### 1. Generally:

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*Estates in Futuro.* Question, whether it is advisable that estates of freehold, to commence in futuro, should be allowed to be created by deeds, although not operating by way of use, *Rep. i. App. 90*.

Answers in the negative, *Rep. i. App. Taunton 102; Dixon 183; Fonnereau 207; Harrison 392*—In the affirmative, *Lawes 111; Butler 116; Duval 125; Pemberton 129; Addison 148; Clowes 155; S. Turner 163; Park 169; Christie 174; Chance 179; Brooke 199; Weatherby 222; Bell 232; Humphreys 261; Sidebottom 277; F. Turner 289; Ker 300; Tyrrell 313; Coote 340; Morley 356; Wallers 375; Senior 405; Barnes 425*.

*ESTATES TAIL:*

1. *Generally.*
2. *Creation of Estates Tail.*
3. *Inconveniences attending Estates Tail.*
4. *Suggestions with regard to Estates Tail being barred.*

1. *Generally:*

One use to which fines are applied is to bar estates tail, and enable a tenant in tail to acquire or pass a base fee, determinable on the failure of the issue in tail, *Rep. i. 21*—There are some cases in which estates are entailed by particular Acts of Parliament, and the entails cannot be barred, *ib. 27*—An estate tail in a woman *ex provisione viri*, cannot be barred by recovery without consent of next heirs; this restraint should be discontinued, *ib.*—As regards copyhold property, estates tail may be barred at any time of the year, by surrender; or if the custom require it, by a recovery in the manor court, *Rep. i. App. Tyrrell 309*—According to some customs, copyhold property is not entailable, *Walters 369*.

2. *Creation of Estates Tail:*

Introduction of estates tail by the statute *de donis*, *Rep. i. 22*—Estates tail created by the Crown, as a reward for public services are, by 34 & 35 Hen. 8, c. 20, prevented being barred, either by fine or recovery, while the reversion remains in the Crown, *ib. 27*.

3. *Inconveniences attending Estates Tail:*

One of the chief insecurities of titles arises from the risk of estates tail in remainder or reversion coming into possession after prior tenants in tail and their issue have been barred by adverse possession, or for a long time have lost all interest in the premises, *Rep. i. 46*—Proposition on this subject, *ib. 78, 79*—Instance of a claim effectually made under an estate tail which had vested in possession immediately before the making of the claim, although created in the reign of Elizabeth, *ib. 46*.

4. *Suggestions with regard to Estates Tail being barred:*

It is advisable that some substitute for fines and common recoveries should be adopted for barring entails, *Rep. i. 31*—Recommendation, that in future there should be only one mode of barring estates tail, *ib.*—Mode recommended, *ib.*—Proposition on this subject, *ib. 71*—Reasons for recommending that estates tail be allowed to be barred at any time of the year, by the substitute for fines and recoveries, *ib. 35*.

Suggestions as to deeds for barring them, *Rep. i. App. Duval 125, 126*—Suggestions as to the law with regard to tenants in tail and remainder men, *Clowes 156, 157*—Tenants in tail should be allowed to bar the entail by deed in all cases in which they could legally do it by fine or recovery, and with the concurrence of the same parties who would then have been requisite, so as to do away with the fictitious and expensive part of fines, &c. but not to alter the law in reference to their legal effects, *Jones 215, 216*—Provisions suggested as to consents on barring estates tail, the law of primogeniture being kept in view, *Humphreys 266*—Suggestions with regard to the requisites of a deed intended to bar estates tail, *Tyrrell 321*—Suggestions as to what relations should be empowered to restrain the barring of estates tail, *ib. 322*—Suggestions with regard to estates tail being barred upon abolishing fines and recoveries, *Senior 410*—Modes of assurance suggested to bar estates tail and remainders, *Tyrrell 509*—Proposed provisions in a Bill for regulating the mode of barring estates tail and remainders, *ib. 511*.

See also *Base Fees*.

**Estoppel.** Various cases in which fines will operate by way of estoppel, *Rep. i. 21*—Also recoveries, *ib. 22*—The law with respect to estoppels should be reviewed; suggestions thereon, *Rep. i. App. Bell 237*—Consideration of the subject of estoppel by deed or non-claim; amendments proposed, *Beaumont 611*.

Question, whether the substitute for fines should have the same operation that fines now have in operating by estoppel, *Rep. i. App. 93*.

Answers in the affirmative, *Rep. i. App. Pemberton 130; Weatherby 224; Humphreys 266*—In the negative, *Tyrrell 320; Coote 345; Morley 360; Senior 407; Barnes 431*—Answers implying doubt, *Sanders 123; Chance 180; Bell 237; Sidebottom 282; Turner 292; Ker 305; Walters 379*—It would be better to do away with estoppel altogether, *Turner 165*.

**Evans v. Corporation of Bury.** Reference to this case as to a presumption of grant from non-payment of tithes, *Rep. i. App. Bell 246*.

**Evidence.** Owing to the perishable nature of all evidence, the truth cannot be ascertained on any contested question of fact after a considerable lapse of time; the temptation to introduce false evidence grows with the difficulty of detecting it, *Rep. i. 39*—Very little attention should be paid to evidence beyond sixty years date, unless it were documentary evidence, *Rep. i. App. Bell 245. 247*.

**Evidence of Consent by Married Women.** Question as to what evidence there should be of the consent having been properly given, and how it should be preserved, *Rep. i. App. 93*.

Answers: certificate to be returned by the barrister or magistrate to the clerk of the peace, *Rep. i. App. Pemberton 130*—The husband might join in the deed, *Addison 150*—The affidavit of examination might be indorsed on the deed, *Clowes 156*—Certificate of due acknowledgment at the back of the deed, *Turner 165; Dixon 186*—Attested on the deed by the authority taking it, and an affidavit of the fact indorsed on, or annexed to the deed, or a short memorial of it inrolled, and an indorsed certificate of the memorial to be evidence of the fact, making it the duty of the office to see that the original memorial was properly authenticated, *Tomlinson 190*—There should be a memorandum indorsed upon the deed, certifying that she fully understood that the object of the instrument was to pass her interest in the estate, and that she consented thereto, without having any provision made for her out of it, *Hadfield 212*—Certificate of examination and consent, signed by the commissioners, indorsed on the back of the deed; also oath of identity, age, and competency of the party, to be administered by the commissioners, and certified by them, and indorsed on the deed, *Jones 215*.

The affidavit of examination should be indorsed on the deed, being sworn before a Master Extraordinary in Chancery, and in the memorial of registry, *Atkinson 195*—There should be a certificate of examination on the deed, *Fonnereau 208*—Certificate indorsed on the deed, signed by the examiners; the deed with indorsement to be inrolled in the Common Pleas, or some other fixed place; examiners to be liable to severe punishment for neglect of duty, *Weatherby 224*—A proper certificate to be returned and filed in a court, with precautions to ensure its being the certificate; plan suggested, *Bell 236*—Certificate of the commissioners written on the margin of the deed, the commissioners also keeping a book of their proceeding; they should be personally answerable for abuse of office, *Humphreys 266*.

**Evidence of Titles.** Much benefit may be expected from amending the laws relating to the evidence of titles, *Rep. i. App. Tyrrell 514*—Remedies proposed for the difficulties of obtaining evidence of titles, *ib. 518*.

**Examination of Married Women.** Questions circulated by the commissioners as to what mode of examination might be adopted, *Rep. i. App. 93*.

Answers thereto, *Rep. i. App. Taunton 104; Peake 108; Butler 120*.

Question, whether the wife should undergo any private examination as to her consent, *Rep. i. App. 93*.

Answers of doubtful import, *Rep. i. App. Taunton, 104; Atkinson 195; Barnes 431*—Answers in the negative, conditionally, *Lawes 111*—Answers in the negative, *Butler 119; Addison 150; Hadfield 212*—In the affirmative, *Peake 108; Sanders 122; Duval 125; Pemberton 129; Clowes 156; S. Turner 165; Christie 177; Chance 180; Dixon 185; Tomlinson 189; Brooke 202; Fonnereau 208; Jones 215; Weatherby 224; Bell 236; Humphreys 266; Sidebottom 282; F. Turner 291; Ker 305; Tyrrell 319; Coote 344; Morley 360; Walters 378; Harrison 397; Senior 407*.

Question, whether the present mode of examination by a Judge, or commissioners appointed for the occasion by the court, should be continued *Rep. i. App. 93*.

Answers against altering the mode, *Rep. i. App. Taunton 104; Jones 215*—Answers in the negative, *Lawes 111; Butler 119; Pemberton 130; Addison 150; Fonnereau 208; Weatherby 224; Humphreys 266; Tyrrell 319*—Answers in the affirmative, *Clowes 156; Tomlinson 189; Harrison 397*—Answers in the affirmative, conditionally, *Sidebottom 282*—Objection to commissioners being appointed for each case, *Walters 379*.

Question.

**Examination of Married Women**—continued.

Question, whether it would be preferable to have standing commissioners in London and in the provincial towns, *Rep. i. App. 93*.

Answers in the affirmative, *Rep. i. App. Peake 108; Christie 177; Brooke 202; Bell 236; Humphreys 266; Tyrrell 320; Barnes 431*—A certain number of barristers and solicitors in each provincial town being made standing commissioners would obviate the necessity of a *dedimus* upon each occasion, care being taken that they have no interest in the estate, and are not concerned professionally, *Jones 215; Tyrrell 320*—Commissioners might be appointed in addition to judges and others, *Walters 379*—Answers in the negative, *Pemberton 130; Addison 150; Clowes 156; S. Turner 165; Dixon 186; Fonnereau 208; Hadfield 212; Weatherby 224; F. Turner 291; Morley 360*—Commissioners are not necessary or proper, *Lawes 111; Sanders 123*.

Question, by whom should such commissioners be appointed, and on what footing, *Rep. i. App. 93*.

Answers: they should be created by legislative enactment for particular districts, *Rep. i. App. Peake 108*—By the judges of the Common Pleas, *Peake 108; Harrison 397*—If at all by any judge in law or equity, with a small fee, *Dixon 186*—By the judges; the commissioners should have proper fees, and be under the control of the judges, *Bell 236*—By the Lord Chancellor, removable like other judicial officers, *Humphreys 266; Coote 245*—By the Lord Chancellor, or some great law officer; they should be responsible, and their fees should be regulated, *Tyrrell 320; Walters 379*—By the Court of Chancery, *Barnes 431*—By attorneys of the court, or masters extraordinary, appointed by the Lord Chancellor, being allotted fixed fees, *Turner 291*—If necessary, by the Crown or Crown appointees, such as the Chancellor, judges, &c., *Tomlinson 190*—By the Crown, and not by the Chancellor or judges, *Brooke 202*.

**Examination of Witnesses.** *Vivâ voce* examination in suits to perpetuate testimony in a court of law, preferred to the mode adopted in equity, *Rep. i. App. Bell 241-243*.

**Exceptions.** Nature of the exceptions to the rules of construction, *Rep. i. App. Tyrrell 552*—Nature of the exceptions to the rule as to dying without issue, *ib. 554*—Exceptions to the rule in Shelley's case, *ib. 555*—Exceptions to the rule that leaseholds shall not pass with a freehold in a general devise, *ib. 562*.

**Exchange and Enfranchisement.** The more frequent cases of exchange and enfranchisement render necessary the statement and proof of the additional titles of the land given in exchange, or of the freehold of the manor, *Rep. i. App. Tyrrell 516*.

**Exchanges of Lands.** Suggestion, that in exchanges to prevent re-entry on what is given on eviction, from what is taken, *Rep. i. App. Senior 590*—Suggestions for amending the law with regard to exchanges, *Perry 609; Beaumont 610*.

**Execution for Debt.** The interest of the copyholder should be liable to be taken in execution, and under an extent, *Rep. i. App. Ker 298*—In what cases execution should be allowed against a debtor's real estate, *Measure 606*.

**Execution of Deeds.** The mode of execution of all deeds should be made similar, *Rep. i. App. Tyrrell 508*.

**Execution of Powers of Appointment.** The defective execution of powers requires further investigation, *Rep. i. 61*.

Question, whether all powers of appointment of any property, real or personal, to be hereafter executed, should be well executed; if executed by deed, signed, sealed, and delivered, in the presence of two witnesses, who shall sign their names; or if of a testamentary nature, by a will made as a will of land, *Rep. i. App. 91*.

Answers in the affirmative, *Rep. i. App. Taunton 103; Butler 117; Christie 176; Dixon 184; Brooke 200; Fonnereau 207; Hadfield 211; Weatherby 223; Bell 233; Turner 290; Ker 303; Tyrrell 316; Morley 358; Walters 377; Harrison 395; Senior 406*—In the affirmative, conditionally, *Humphreys 263; Barnes 427*—In the negative, *Addison 149; Clowes 155; Turner 164; Atkinson 194*—Answers of doubtful import, *Chance 180; Jones 214; Sidebottom 280; Coote 342*.

Question, whether powers of appointment, to be hereafter created, should be executed in any other manner, whatever other formalities the instrument creating them may prescribe, *Rep. i. App. 91*.

Answers in the affirmative, *Rep. i. App. Taunton 103; Christie 176; Dixon 184; Brooke 200; Fonnereau 207; Hadfield 211; Bell 233; Ker 303; Walters 377; Senior 406; Barnes 427*—Answers in the negative, *Addison 149; Turner 164; Coote 342; Morley 358; Harrison 395*—Answers of doubtful import, *Chance 180; Jones 214; Sidebottom 280; Turner 290*—The donor should have the power to prescribe other formalities, *Butler 117; Weatherby 223; Bell 233; Tyrrell 316*—Individuals should be at liberty to prescribe forms of execution, and these should be attended to, *Clowes 155*—It would be better to assimilate the execution of powers to the ordinary rules of deeds and wills, *Humphreys 263*.

**Execution of Wills and Deeds.** Freehold land can only be devised by a will signed by the testator, and attested by three witnesses, while a will of copyhold or of leasehold lands requires no witness, and need not be signed, *Rep. i. 58*—Whether there may not be one form prescribed for the execution of all wills is under consideration, *ib. 59*—Five different rules for the execution of wills, *Rep. i. App. Tyrrell 513*—The form of executing wills and deeds might be similar, *ib. 514*.

**Executors.** It is desirable to provide against executors taking beneficially in opposition to the claims of the next of kin, *Rep. i. App. Clowes 159*.

**Executory Devises.** Suggestion as to the rule that might be applied to executory devises, springing and shifting uses, &c., *Rep. i. App. Sidebottom 278*—State of the law with regard to executory devises, and amendments suggested, *Addison 460*.

**Executory Interests.** A fine will destroy or extinguish executory interests, *Rep. i. 21*—A recovery will have similar operation, *ib. 22*.

**Executory Limitations.** Reasons why executory limitations and trusts should not have been admitted, and why they should not now be abrogated; incongruities attending them, *Rep. i. App. Butler 116*.

**Exemption from Tithe.** It is not just that length of time, which improves the title to land, should impair the title to exemption from tithe; injury thereby to the Church, *Rep. i. App. Gurney 97, 98*.

**Existing Institutions.** It is necessary in all new enactments, to preserve the spirit and the analogies of existing institutions, *Rep. i. 9*.

**Expense of Transfer.** Principal causes of the expense of transfer of land, *Rep. i. App. Senior 589*—Remedies suggested, *ib. 590*.

**Expenses of Titles.** By whom expenses of titles are borne, *Rep. i. App. Tyrrell 515*.  
See also *Delays and Expenses*.

**Extinguishment of Tithes.** At present, there is no mode by which a merger or extinguishment of the tithes can be effected, *Rep. i. 55*.

## F.

**Families.** In England, by the law of real property, families are preserved, *Rep. i. 7*.

**Family Name and Arms.** Preference of the paternal kindred may be induced in order to retain the family name, *Rep. i. App. Tomlinson 189*—Difficulties sometimes arising from conditions in settlements and wills, as to the use of the family name and arms, *Tyrrell 314*.

**Farm Buildings, Fences, &c.** Suggestions in copyhold property for a local tribunal, where matters relating to agricultural management might be regulated, *Rep. i. App. Barnes 416*.

**Father.** An estate may pass to the younger brother of the father, and upon his death it may pass to the father as his heir; but rather than go at once to the father or mother of the deceased proprietor, the law directs the estate to escheat, *Rep. i. 10*—It is recommended that a father of an intestate purchaser take before brothers and sisters; reasons for the recommendation, *ib. 12*—Reasons for preferring the father to the brother or sister of a deceased proprietor, *ib.*—Objection to giving a father, who has aliened his own right, a power of consenting where his children are concerned, *Rep. i. App. Bell 238, 239*—Objection to the father succeeding to an intestate son before his brothers and sisters, *Turner 288*—Preference should be given to the father over the uncle or cousin, but not over the brother or nephew, *Morley 353*—Reason for preferring the brother to the father in cases of descent, *Senior 408*.

**Father and Grandfather.** Question, whether the issue of a deceased father should not be preferred to a grandfather, and so on, *Rep. i. App. 89*.

Answers, of doubtful import, *Rep. i. App. Bell 231*—The law should remain as it is, *Taunton 100; Peake 108; Fonnereau 206; Harrison 388; Barnes 422*—Answers in the affirmative, *Laves 110; Butler 115; Pemberton 128; Addison 146; Clowes 154; S. Turner 162; Dixon 183; Tomlinson 189; Brooke 198; Hadfield 209; Weatherby 220; Humphreys 257; Sidebottom 276; F. Turner 288; Ker 298; Tyrrell 311; Coote 339; Morley 353; Walters 372; Senior 404*.

**Father and Son.** There are many instances in which a son has made provision for his father during his father's life, but none where having brothers and sisters he has made an absolute disposition in favour of the father, *Rep. i. App. Turner 288*.

**Fealty and Seisin.** As regards rents, the rule of law, which declares that when the lord recovers fealty, he recovers seisin of all other services, should be abrogated, *Rep. i. App. Butler 121*.

Fearne's

*Fearne's Essay.* Reference to Mr. Fearne's Essay for the rule of perpetuities, and to Mr. Preston's note thereon as to accumulations, *Rep. i. App. Butler* 116.

*Fee-Simple.* Objection to the proposed plan of considering every person who dies owner of an estate in fee-simple, as the stock from whom alone the inheritance is to be traced, as if he had been the first purchaser, *Rep. i. 14*—Limitation to special heirs in grants of estates in fee-simple is forbidden, though it allows them on the creation of estates tail; proposal for allowing them in the former case, *ib. 15*—A fee-simple, to arise on the determination of a prior conditional fee-simple, should be allowed to be created by deed, *ib. 57*.—See also *Base Fees*.

*Fees.* By requiring words of inheritance, or something equivalent, to pass a fee, and by refusing to allow an estate for life to go to a man, and a remainder to his heirs as purchasers by the same will, an estate for life is held to pass where a fee was clearly intended; and, on the contrary, a devisee meant to take only a life-estate, is allowed to dispose of the fee, *Rep. i. 58*—Rate of fees that should be paid to commissioners on taking fines, &c. *Rep. i. App. Brooke* 202.

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*Felony.* Objection to the absence of forfeiture for felony in cases of gavelkind lands, *Rep. i. App. Tyrrell* 308.

*Female Ancestors.* Rule of descent as regards female ancestors, *Rep. i. 11*—Question, with respect to female stocks on the paternal side, *ib.*—Proposal, that Mr. Justice Blackstone's rule as to female ancestor, be adopted, *ib. 14*—Proposal, that where from the failure of the male ascending line, inheritance shall pass to any female ancestor, or any person or persons claiming through any female ancestor of the first purchaser, preference in tracing inheritance shall be given to the male ascending line of the first purchaser, and of his ancestors, without regard to proximity of kindred, *ib. 63*.

*Feudal Tenures.* The scheme which has been recently proposed of entirely abolishing the feudal doctrine of tenures, would introduce universal confusion, and since 12 Car. 2, c. 24, no incident of tenure remains which is oppressive or vexatious as between the Crown and the subject, *Rep. i. 56*—It has been practised, though more silently and with less appearance of force in the dispossession of the natives of the soil, both by the monarchy of Britain in Australasia and Canada, and by the United States in the countries to the west of the Alleghanies, *Rep. i. App. Brooke* 196.

*Fictions.* Legal fictions are in general great evils; there is seldom or never occasion for them, *Rep. i. App. Lawes* 112—Objection to the fictions which have arisen from the feudal system, laws of tenure, entails, &c., *Ker* 295.

*Fine and Non-claim.* Enactments of stat. 4 Hen. 7, c. 24, relative to fine and non-claim, *Rep. i. 40*—Reasons in detail for recommending the abolition of proceedings by fine and non-claim, *ib. 43*—Observations with regard to the law of fine and non-claim; amendments suggested, *Rep. i. App. Gardner* 453.

*Fines and Heriots.* Definition of a fine, and its origin, *Rep. i. 20*—Different sorts of fines; operation of fines, *ib. 21*—Great skill and nicety required in levying fines for particular purposes, and mischiefs arising from want thereof, *ib.*—Proposition, that upon enfranchisement in cases of partial interests, a yearly rent shall be paid in lieu of fines, heriots, reliefs, and other certain and uncertain dues, *Rep. i. App. Butler* 114—Fines to a serious extent are sometimes demanded on the sale of copyhold property, *Fonnerneau* 206—The lord of a manor should not be entitled to any fine on a surrender where the surrenderee was tenant-in-tail, and had been before admitted and paid his fine, *Weatherby* 225—Hardship upon a small tenantry of copyholds with unlimited fines; they are frequent in the north, *Bell* 229—Suggestions for a lord having power to resort to the land for his fines, *ib. 230*—In the instance of copyholds subject to fines certain, they might be converted for compensations, but not so in case of fines arbitrary, *Humphreys* 254.

Instance of the costs of an alienation fine exceeding 4,000 *l.*, *Rep. i. App. Tyrrell* 319—Errors in fines; difficulties in some cases of rectifying them, *ib.*—Burthens to which many copyholds are subject in the shape of arbitrary fines and heriots, *Walters* 369—Proposition, that they should consist only of the writ of covenant, the præcipe and concord, and should pass through one office only, *Harrison* 397—There is a bar to the improvement of copyhold property, occasioned by fines rising with improved value, *Senior* 404—Plan adopted formerly in America to obviate the necessity of fines; similar plan suggested for the United Kingdom, *Harland* 448—Questions which arise on fines, *Tyrrell* 508—Objects of fines, *ib.*

See also *Alienation Office. Copyhold Fines. Heriots. Mines.*

**FINES AND RECOVERIES:**

1. *Origin and nature of Fines and Recoveries; state of the Law; Forms and Proceedings necessary.*
2. *Advantages of the present system of Fines and Recoveries.*
3. *Objections to the System.*
4. *Suggestions for the Amendment of the Law with respect to them.*
5. *The abolition of Fines and Recoveries recommended.*
6. *Queries circulated by the Commissioners on the subject, with Answers thereto.*
7. *Papers laid before the Commissioners.*

1. *Origin and nature of Fines and Recoveries; state of the Law; Forms and Proceedings necessary:*

A fine is used to convey the estate of a married woman; a recovery to bar an estate tail, *Rep. i. 8*—State of the law with regard to fines and recoveries, *ib. 20*—Different offices through which fines and recoveries have to pass, *ib. 25*—The forms and proceedings being so very numerous and complicated, mistakes are not to be wondered at; the court will in some cases rectify mistakes, but in others will refuse, *ib.*—A party claiming under fine or recovery, may lose his estate although his title may be merely defective, in consequence of some formal error or omission; applications to amend frequently subject the party to very heavy expenses, *ib.*—Several centuries have passed since fines and recoveries were first used as common assurances; veneration with which they have been looked upon by successive generations of lawyers; in what their utility alone consists, *ib. 31*—Operation of fines, *Rep. i. App. Tyrrell 497*.

2. *Advantages of the present system of Fines and Recoveries:*

Advantages of the present system; brevity might be introduced and expense saved; property therein should be more minutely described, *Rep. i. App. Taunton 104*—Reasons in favour of retaining the names of fine and recovery, *Brooke 202*—Few questions of law arise upon fines and recoveries, *Harrison 398*.

3. *Objections to the System:*

Summary of the objections to fines and recoveries, and opinion that the objects effected by them may be accomplished by more simple means, *Rep. i. 30*—Fines and recoveries, together with the whole mass of technical law relating to them, are mere excrescences from the main body of the laws, *ib. 31*—The whole practice of fines and recoveries is a disgrace to the law, especially in the case of peers; it is an absurd and unnecessary mockery and exposure, and occasions great interruption to the business of the Court of Common Pleas, *Rep. i. App. Lawes 111*—Statement of the principal inconveniences arising from the present mode of levying fines and recoveries, *Tyrrell 319*—Objection to the proceedings upon fines and recoveries; constant amendments required; mode of obviating the difficulties suggested, *Gardner 453*—Other mischievous effects of fines and recoveries, *Tyrrell 511*—Objection to fines; other modes by which the same objects may be gained, as regards married women, entails, nonclaim, &c., *Weatherby 638*.

4. *Suggestions for the Amendment of the Law with respect to them:*

Proposed alterations in the law, *Rep. i. 31. 71*—Some substitute recommended to be applied to barring entails, and extinguishing the interests of married women, *ib. 31*—The practice of the different courts with regard to fines and recoveries ought to be assimilated, *Rep. i. App. Brooke 203*—The happiness and independence of the people would not be prejudiced by the removal of this machinery, *Ker 295*—Doubts of the expediency of retaining the name of fine, *ib. 305*—Suggestion, that a cheap and expeditious mode of creating tenures in fee be substituted for fines and recoveries, *Gilbert 444*—A deed acknowledged before the resident barrister, and enrolled with the registrar, should be substituted for fines and recoveries, *Pemberton 456*—Amendments required in the law for barring entails; objection to the present method, *Longley 470*—Modes of assurance suggested in lieu of fines and recoveries, *Tyrrell 509*.

The proposed alterations will remove many difficulties, and can occasion but few, *Rep. i. App. Tyrrell 512*—Suggestions, that simple modes of conveyance should be substituted for fines and recoveries, *Senior 589*—Suggested amendments of the law with regard to fines and recoveries, *Hovenden 594; Bacon 599; Measure 605; Tamlyn 606; Dawson 626; Hadfield 628; Lewis 630*—Suggestions for shortening the proceedings as to fines, *Tamlyn 607*—Deeds of conveyance acknowledged before a master extraordinary in Chancery, or two magistrates of the county, should supersede fines and recoveries, *Morgan 632*—Fines and recoveries ought not to be passed through the offices in London, in the counties palatine, or the Court of Great Sessions in Wales, *Boileau 608*—A simple conveyance should have the effect of fines and recoveries, *Perry 609*.

5. *The*



**FINES AND RECOVERIES**—continued.5. *The abolition of Fines and Recoveries recommended:*

The abolition of fines and recoveries would be highly beneficial to the owners of real property, while it would relieve both counsel and solicitors from much useless learning and responsibility, *Rep. i. 31*—Proposition, that fines and common recoveries be abolished, *ib. 71*—Necessity for getting rid of this tedious and uncertain process, *Rep. i. App. Ker 295*—The subject of fines and recoveries considered; suggestions for the abolition thereof, and for subsequent practice, *Tyrrell 508*—Fines and recoveries should be entirely abolished, *ib.*—To whom compensation must be paid if fines and recoveries should be abolished, *ib. 566*—Suggestions for the abolition of fines and recoveries, and the substitution of stamped licences, *Wharton 591*—Suggestion for the abolition of fines and recoveries; proposed substitute, *Stewart 607; Atkinson 617; Richardson 633; Seymour 633; Whincop 641; Wratlaw 642.*

6. *Queries circulated by the Commissioners on the subject, with Answers thereto:*

Questions circulated by the commissioners on the subject of fines and recoveries, *Rep. i. App. 93.*

Written answers thereto, *Rep. i. App. Taunton 104; Peake 108; Lawes 111; Butler 119; Sanders 122; Duval 125; Pemberton 129; Addison 149; Clowes 156; Turner 165; Park 169; Christie 177; Chance 180; Dixon 185; Tomlinson 189; Atkinson 195; Brooke 201; Fonnereau, 208; Hadfield 212; Jones 215; Weatherby 224; Senior 407*—*Vivâ voce* answers to questions, and examination thereon, *Bell 236; Humphreys 265; Sidebottom 282; S. Turner 291; Ker 305; Tyrrell 319-325; Coote 344-347; Morley 360-362; Walters 378-382; Harrison 397-400; Senior 410; Barnes 430-432*—Suggestions in answer to various questions on the subject of fines and recoveries, *Butler 120*—The like as to various other questions, *Addison 150; Jones 215*—General answers to further questions on the subject of fines and recoveries, *Ker 306.*

Question, whether the purposes for which fines and recoveries are now levied and suffered, or any of them, could be attained by more simple and less expensive modes of assurance, *Rep. i. App. 93.*

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7. *Papers laid before the Commissioners:*

Forms of acknowledgment before a judge of the execution of deeds to bar estates tail and remainders, dower, &c., in lands in America, *Rep. i. App. 450*—Form of the certificate of acknowledgment before the Lord Mayor of York to be added immediately after "In witness whereof, &c." *ib.*

Account of the number of fines passed the King's Silver Office, and the amount of fees paid for passing them 1826-1828, *Rep. i. App. 652*—Account of fees paid for searching for fines in the same office 1826-1828, *ib.*—Return of the number of fines that were passed 1825-1827, and total amount of monies received upon them in the Custos Brevium Office, *ib. 654*—Return from the Cursitor's Office of the number of writs of covenant, entry, and dedimus potestatem for fines and recoveries 1826-1828, *ib. 656*—Return from the Alienation Office of fines paid on writs of entry and of præ and post fines paid on writs of covenant 1826-27, 1828-29, with the appropriation thereof, *ib.*—Return of the division of post fines 1824-25, *ib. 657; 1825-26, ib. 659; 1826-27, ib. 661*—Bill of costs for a fine in the Court of Common Pleas, where the party appears in court, *ib. 668*—The like with a dedimus potestatem, where the party does not appear in court, *ib.*

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**First Purchaser.** In what cases it is proposed that the heir of the first purchaser should be let in, *Rep. i. 15*—Proposition that, when in case of inheritance having passed to the half blood, the heir of the person last seised or entitled shall not be the heir of the purchaser, the heir of such purchaser shall be the person to take the same by inheritance, *ib. 64.*

**Fonnereau, Thomas George.** Answers to questions on the subject of tenures, *Rep. i. App. 205*—Descent, 206—Dower, *ib.*—Curtesy, 207—Alienation by deed, *ib.*—Settlement, *ib.*—Fines and recoveries, 208—Limitation of action and prescription, *ib.*



**Foreclosure.** Suggestion for abolishing the law of foreclosure altogether; the French inhibit it in very strong language, *Rep. i. App. Humphreys* 263—Mortgagees should be compelled to sell and not to foreclose, but with liberty to bid, under proper restrictions, *ib.* 268—The Court of Chancery should have the power of sale on a foreclosure, *Harrison* 403—Suggestion for substituting a decree for sale instead of foreclosure, according to the course of the courts of equity in Ireland, *Vesey* 452.

**Foreign Countries.** In the consideration of the laws of real property of this country, little benefit is derived from considering what are the laws of other countries, *Rep. i. App. Ker* 301—Registers are established in most other countries, *Tyrrell* 523.

**Foreign Residence.** Should not be saved from prescription; the advantages attending it counterbalance its disadvantages, *Rep. i. App. Butler* 120.

**Forfeiture of Estates.** A fine when levied by a tenant for life or in tail, after possibility of issue extinct, or by a tenant for years, or by a copyholder, will produce a forfeiture, *Rep. i.* 21—In what cases a recovery will have a similar effect, *ib.* 22—Cases of forfeiture frequently occur from the want of due attention to the different tenures by which lands are held, *ib.* 21—Objection to the forfeiture of particular estates by means of fine and recovery, *ib.* 30—Gavelkind land being exempt from forfeiture is one of its advantages, *Rep. i. App. Bell* 228—Necessity for abolishing the doctrine relating to forfeiture, *Ker* 295—Proposed alteration of the law of forfeiture as regards tenants for life and years, *Morley* 360—One of the disadvantages of copyhold property is the liability of the holders to forfeit their estates for waste, for cutting down timber except for repairs, for letting without the lord's leave, for aliening contrary to custom, and for non-payment of fines and rents, *Walters* 369—Propositions relative to forfeiture and escheat, and observations thereon, *Bacon* 603.

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**Form of Settlement.** Form of a settlement prepared in reference to certain powers suggested to be contained in a proposed Act of Parliament, *Rep. i. App. Butler* 118, 119.

**Formedons.** By 32 Hen. 8, c. 2, formedons in reverter or remainder were required to be sued within fifty years, *Rep. i.* 39—The statute 21 Jac. 1, c. 16, limits the period for all writs of formedon to twenty years, *ib.*—The time within which a formedon may now be brought is too short, *Rep. i. App. Weatherby* 225.

**Forms of Conveyances.** Proposal under consideration, for recommending prescribed forms of conveyance, to which in certain cases a given effect shall be imputed, *Rep. i.* 57—It would be very useful for the Legislature to enact a formulary, containing prescribed models or set forms of all sorts of conveyances, drawn up in the most concise and technical words, not to be used compulsorily, but to be good and sufficient when used, *Rep. i. App. Taunton* 102—Suggestions for setting forth certain forms which might be adopted by reference; this might apply to various provisions, *Chance* 180—Little of the expense of transfers of property arises from their length; there is nothing to prevent persons having conveyances in six lines at present as formerly, if they would dispense with the complex arrangements rendered necessary by the present state of society, *Ker* 302—Objection to abandoning known forms in search of justice, about which no two persons agree, *Harrison* 397—Two kinds of instruments suggested instead of the various descriptions now in use; mode of execution proposed, *Pemberton* 456.

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**France.** Law of prescription according to the Code Civil of France, and also according to the Code Napoleon, *Rep. i. App. Cooper* 133—The circumstance of the English law construing every custom strictly, makes a material difference between it and the ancient laws of France, *Morley* 349.

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**Frank Fee.** Lands in ancient demesne become frank fee if a fine or recovery is levied or suffered in the Common Pleas instead of the court of the manor, *Rep. i. 29.*

**Fraud.** By means of a general registry, fraud in all transactions respecting real property would be effectually prevented, *Rep. i. 60*—Present state of the law as to equitable relief in cases of fraud and trust; proposal, that there should be a legislative enactment, making twenty years a limitation in certain cases, *ib. 49, 50. 78.*

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**Free and Common Socage.** It is desirable that all lay fees should be held by the simple and excellent tenure of free and common socage, and should be descendible, devisable, and transferable, according to the rules of common law, *Rep. i. 56.*

**Freebench.** It may be worth consideration, whether freebench in copyholds might not be put upon the same footing as dower, *Rep. i. App. Tyrrell 312*—Objectionable nature of freebench in cases of copyholds for lives; amendments suggested, *Barnes 418.*

**Freehold Tenure.** Common and statute law as to a freehold vested in the tenant to the præcipe, *Rep. i. 23*—Mischiefs of this law detailed, *ib. 24*—Reasons for adopting a new rule in regard to barring of estates tail in remainder, in preference to the present rule, requiring the concurrence of the person having the freehold, *ib. 32*—If originally there had been no distinction in lands of inheritance between freehold and copyhold, it would have been desirable, *Rep. i. App. Barnes 415*—Inconveniences occasioned by all freehold tenures, *Tyrrell 479*—How far these inconveniences may be remedied, *ib. 480*—Estates less than freehold require new regulations, *ib. 485.*

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**French Civil Law.** Reference to the French civil law; authorities are not allowed to be quoted in court, *Rep. i. App. Humphreys 249, 250*—Comparison of difficulties and facilities in preparing the French code and one for England, *ib. 251.*

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**Gardner, George.** Communication from George Gardner of Birthwaite, suggesting alterations in the law of real property, *Rep. i. App. 452.*

**Gatty, Haddon, Gatty & Haddon, Messrs.** Communication from Messrs. Gatty, Haddon & Co. of Angel court Throgmorton-street, suggesting amendments of the law of real property, *Rep. i. App. 627.*

**Gavelkind Tenure.** Nature of the tenure by gavelkind prevalent in Kent, *Rep. i. 56*—It prevails in few places out of Kent; if more prevalent it would be injurious to monarchical government; list of Acts passed for its partial abolition; there have been none since 21 Jac. 1, *Rep. i. App. Taunton 98*—The lands are free from forfeiture for felony, *ib.*—Reference to Mr. Watkins' 141st Note to Gilbert's Tenures, 4th Ed., showing the inconveniences of gavelkind tenure, *Weatherby 219*—The public records being thrown open by the Parliamentary Commissioners, will give greater facilities for showing those lands in Kent not held by gavelkind tenure, *Bell 228*—If a power be given of disgavelling

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disgavelling by deed, the deed should be enrolled in a court of record, and a copy lodged with the clerk of the peace, *Sidebottom* 271—There is no objection to its abolition everywhere but in Kent, *Tyrrell* 308; *Coote* 337; *Morley* 351—It would have been desirable if originally there had been no distinct custom like gavelkind or borough English; doubts as to the advantage of their abolition now, *Barnes* 415—Gavelkind tenure should be discontinued, *Tyrrell* 480.

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Answers thereto, *Rep. i. App. Butler* 113; *Humphreys* 253; *Sidebottom* 270; *Ker* 296; *Walters* 366, *note* \*; *Clowes* 153; *S. Turner* 161; *Dixon* 181; *Fonnereau* 205; *Jones* 213; *Bell* 228; *F. Turner* 286; *Tyrrell* 308; *Coote* 337; *Morley* 350; *Walters* 366; *Senior* 403.

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*General Register of Births, Marriages, and Deaths.* A civil register of births, marriages, and deaths, including all classes and religious persuasions, and giving the additions, trades, or professions, and residences of the parties, is exceedingly desirable; it exists in other states, and should be established in England, *Rep. i.* 60—Suggestions for a general registry with respect to marriages, births, and burials, *Rep. i. App. Harrison* 402—Suggestion for establishing a general office for the registration of all pedigree facts, *Senior* 590.

## GENERAL REGISTRY OF DEEDS, &amp;c.:

1. *Advantages to be derived from a General Registry of Wills, Deeds, &c.*
2. *Suggestions and Recommendations with respect to its Establishment.*
3. *Doubts as to the expediency of a General Registry.*
4. *Objections to a General Registry.*
5. *Queries circulated by the Commissioners on the subject, with Answers thereto.*

1. *Advantages to be derived from a General Registry of Wills, Deeds, &c.:*

If a general registry should be established, and all deeds and wills should be registered without distinction, it would then be unnecessary to incumber the substitute for  
fines

## GENERAL REGISTRY OF DEEDS, &amp;c.—continued.

1. *Advantages to be derived from a General Registry, &c.*—continued.

finer and recoveries with any peculiar formalities, and a tenant in tail might then have the power of disposition by will as well as by deed, *Rep. i. 35*—The objections to abridging the longer periods of limitation, and to abolishing fine and non-claim, will be materially lessened if a general registry be established; other advantages thereof, *ib. 48*—No measure has been suggested from so many quarters, or has been so urgently pressed, as a general registry of deeds; advantages that it is supposed would result from such a plan; difficulties of the plan, *Rep. i. 60*.

Necessity for a registration of deeds, *Rep. i. App. Gurney 97*—Opinion in favour of a general registry, *Humphreys 266*—Without the adoption of a general registry, and the abolition of the equitable doctrine of notice, no effectual system of laws of property can be framed, *Ker 296*—The certainty and security gained by a general registry would a hundred times counterbalance any inconvenience arising from publicity, particularly considering, that in most cases where secrecy is required, it is for the purposes of deception or fraud, *ib. 302*—One advantage of copyholds is the general registry afforded by the rolls, *Senior 404*—Advantages which a copyhold registry affords over the partial registry adopted for freeholds, *Barnes 416, 417*.

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2. *Suggestions and Recommendations with respect to its Establishment:*

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3. *Doubts as to the expediency of a General Registry:*

A general registry might be made notice in law, but would not amount to such in fact; a search for a fine is easier than a search in a general registry would be; a general registry is a matter of doubtful policy, *Rep. i. App. Taunton 105*—Enrolment, with full efficacy given to it, preferred to registry with the partial effect now attached to it; difficulties in the way of registration, *Clowes 158*—Unless some better mode be adopted of making searches, and discovering the contents of deeds, than that now in use, the utility of a general registry will not be so great as is supposed, *Bell 238*—A recorded title might be obtained by a general registry, but a very different one from that subsisting, *Sidebottom 273*—The practicability of a general registry doubted, *Coote 345, 347*—Expediency of a register, a most important question; objections to it arise from the inconvenient regulations of the present local Acts, *Tyrrell 520*—A register cannot be made retrospective, *ib. 530*.

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5. *Queries circulated by the Commissioners on the subject, with Answers thereto :*

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*Glanville.* Quotation from Glanville on the law of dower, *Rep. i. App. Barnes 423.*

*Glebe Land.* Portions of glebe are frequently lost in consequence of being in the possession of persons to whom prior incumbents have let or sold their interest without having preserved any notice of their being church property, *Rep. i. App. Tyrrell 335.*

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*Grant, Sir William.* Opinion by Sir William Grant, that wills of real and personal property should be put on the same footing, *Rep. i. App. Ker 296.*

*Granting Leases, Power of.* Question, whether there is any objection to making the usual power of granting leases at a rack-rent a legal incident to estates for life, or determinable with life, under settlements or wills, in the absence of any provision to the contrary, *Rep. i. App. 92.*

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*Grants.* Evidence upon the necessity, or otherwise, of pleading grants in cases of prescription, *Rep. i. App. Tyrrell 332*—The limitation in some manors of the lord's power to grant, is a disadvantage in copyholds, *Senior 404.*

*Great Britain and Ireland.* Proposition, that the privilege of prescription allowed to absence beyond seas, shall be restricted to absence from the United Kingdom of Great Britain and Ireland, including the islands of Guernsey, Jersey, and Alderney, and the Isle of Man, *Rep. i. 44. 78.*

*Great Grandfather.* The great grandfather should be fixed as the limit of descent, *Rep. i. App. Turner 288.*

*Great Great Grandfather.* No recollection of a descent being traced through an ancestor more remote than the great great grandfather of the intestate, *Rep. i. App. Tyrrell 312.*

*Great Sessions in Wales, Court of.* Fines and recoveries are levied and suffered in this court; the rules of that court nearly resemble those of the Court of Common Pleas, *Rep. i. 26.*

*Guardians.* Suggestions for amending the law with respect to guardians, *Rep. i. 60 and App. Barnes 428*—The law of guardianship is obscure, and frequently defective, *Rep. i. App. Humphreys 265*—The rights and duties of guardians and committees ought to be extended and more defined, *ib. 268.*

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*Hale*, Sir Matthew. Extract from a treatise by Sir Matthew Hale in favour of a general registry, *Rep. i. App. Tyrrell* 523.

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#### LIMITATION, STATUTES OF:

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**County Registers.** A Bill for the establishment of registers in each county was prepared by a commission in the time of the Commonwealth, *Rep. ii. 18*—Advantages that would result from a universal registry by counties, *Rep. ii. App. Lane* 14—A local register office in each county in England would be preferable to a general office in London, *Longley* 45—Registration is as practicable in other counties as in Middlesex and Yorkshire, *Wilson* 46—There should be a register in each county, *Askew* 48; *Ostler* 109; *Wharton* 118—Various objections to which the plan of distinct registers for each county is open, *Adlington* 73—The departments in the register office should be divided into counties, and cities and towns being counties of themselves, *ib.* 75.

Suggestion for the establishment of offices in each county for the registry of instruments affecting real property, *Rep. ii. App. Bird* 83—The most convenient mode appears to be to establish a separate registry for each county, in a central situation, *Bramwell* 87—One office should be erected in the centre town of each county, *Carr* 87—An office might be established in a central situation in each county, *Clay* 88—In large counties it would be a great hardship to send to the county town to make a search in every petty purchase, *Hawkins* 98—Each county should have one or more offices, or every Hundred should have one; returns being required to one central point, *Leach* 102.

There should be a separate registry in every county of transfers affecting estates therein, *Rep. ii. App. Lindsay* 103—If the lands comprised in any deed are situate in more than one county, the deed should be registered in each, *Messiter* 105—Expense and delay would be diminished, and defects of title prevented, by registration in an office in each county, *Morgan* 107.

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be an office for registration and search, *Rep. ii. App. Sweet* 114.—Suggestion for an office in each county in England and Wales, and that chambers in some public building in the capital town be set apart for the purpose, *Wilkinson* 124.—Manner in which county registers would be found much more expensive and troublesome than a metropolitan registry, *Wimburn* 126.

*County Surveys.* Suggestion that a copy of the survey of each county, with the boundaries accurately defined and approved by commissioners appointed for the purpose, be deposited in the register office of each county, *Rep. ii. App. Wilkinson* 124.

*Court Rolls.* Copies of court rolls are legal evidence, *Rep. ii. 44*.—Court rolls should be put on the same footing as the register, as regards estates passing by surrender, *Rep. ii. App. Walters* 7, note +.—Making an enrolled duplicate evidence, when the stamped duplicate shall be lost, would give to freeholders the advantages of a copyhold court, without its obnoxious tenure, *Lowndes* 17.

*Courts of Justice.* Powers should be given to courts or judges to compel registration by persons withholding documents from the registry, *Rep. ii. App. Adlington* 77.

*Courts of Law and Equity.* It is considered that a court of equity is generally a better tribunal than a court of law for cases of fraud; in what cases a court of law is best; and cases in which a concurrent jurisdiction should be given, *Rep. ii. 41*.

*Covenant for Production of Deeds.* In some cases the party who holds the deeds, covenants for the production of them; in others, no covenant can be obtained, *Rep. ii. 15*.—When the covenant is effectual, the deeds may be lost, *ib. 16*.—If equity interference in the production of deeds does exist, the title is still unmarketable without a covenant which can be enforced at law, *ib.*—Benefit will arise from a register by covenants for production of title deeds becoming unnecessary, *ib. 63*.

Difficulties in the present law as regards the rights of persons suing upon covenants, particularly as regards covenants to produce title deeds; suggestions on the subject, *Rep. ii. App. Briggs* 6.—Registration will prevent the necessity of covenants to produce, *Walters* 49.—Reason why the covenant to stand seised was not required to be enrolled, *Bacon* 61.—Suggestion, whether it would be practicable to make duplicates serve for originals, so as to dispense with deeds of covenant for production of title deeds, *Adlington* 75.—The necessity for covenants to produce would be obviated if original deeds were to be deposited in the registry, *Lindsay* 103.

*Credit.* Certain information of the state of property would advance legitimate credit, *Rep. ii. 22*.—A matter of first importance in a commercial point of view, would be ascertained by a registry, which is, whether persons were really trustworthy in respect of their landed property, *Rep. ii. App. Fonnereau* 11.—General credit would be strengthened and improved by a general register, *Wilson* 47.—Registration would prevent improper credit arising from the ostensible possession of property, *Walters* 49, 50.—A registry will facilitate proper credit, and check false credit, *Fonnereau* 97.—How far credit might be affected by registration, *Morgan* 107.—One effect of registration would be to destroy the credit which is acquired and upheld by the possession of property, and which would easily be accomplished by malice or rivalry, *Sweet* 114.

*Creditors' Suits.* Proposition for allowing parties in creditors' suits interested in assets, to bring incumbrancers before the court by petition to have their accounts taken, instead of having to proceed by separate suit; and also to allow incumbrancers themselves to come before the court in a similar manner, *Rep. ii. App. Lowndes* 26.

*Crowder, George A.* Communication from G. A. Crowder, of Lothbury, showing the necessity of registration to prevent the effect of suppressing deeds, *Rep. ii. App. 95*.

*Crown Bonds.* Manner in which the lands of almost every individual concerned in commerce or merchandize, are liable as Crown debtors, on customs or excise bonds *Rep. ii. App. Lowndes* 24.—Crown bonds are nowhere registered, yet when judgment is obtained, it relates back to the date of the bond, *Hawkins* 98.—No recognizances or bonds to the Crown, should affect lands unless registered, in a similar way to judgments in personal actions, *Woodrooffe* 130.

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*Crown Debts.* Liabilities to the Crown should not be effectual against purchasers, without registration, *Rep. ii. 30*.—The names and description of all persons who contract, either as principals or sureties, any liability to the Crown, should be entered at the register office, *ib. 32*.—Crown debts should be authenticated by the signature of the proper officer, *ib. 34*.—It will be necessary to refer to the register of Crown debts, by an alphabetical list of names, *ib. 47*.—The indexes to Crown debts should extend to the whole of England and Wales, *ib. 52*.—Proposal that Crown debts be not registered in districts, *ib.*—Crown debts should be indexed by alphabetical lists of the names of the debtors, *ib. 55*.

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Difficulties arising from there being no record of Crown debts; also from the nature of the debts falling within that description, being undefined, *Rep. ii. App. Briggs* 5—Offices at which searches are most usually made for Crown liabilities, *Grover* 12—Great advantages that would result if a register were kept in one place, of all persons who are liable to extents of the Crown, *Lane* 14, *note* †—Propositions on the subject of Crown debts, *Lowndes* 23—Evils of the trouble and expense of searching for Crown debts; suggestions for their registration, *Stevens* 261.

There should be registered judgments, statutes, recognizances, and liabilities to the Crown, constituting a real lien upon land, *Rep. ii. App. Balfour* 31—As lands belonging to an accountant of the Crown may be extended for his liabilities in that character, into whose hands soever they may pass, much of the hardship arising from this rule might be obviated by the records, *ib.* 33—Registration, or some other equivalent publicity, should be necessary to make debts of the Crown charges upon land, *Butler* 37—All securities given by debtors or accountants to the Crown, which create any lien on lands, should be registered, *Burge* 43—Crown debts and the quietus should be registered, *White* 57.

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*Crown Judgments.* Crown judgments should not take precedence of a subject's judgment, which shall be prior in point of time, *Rep. ii. App. Hawkins* 98.

*Crown Liens.* Liens of the Crown are most inconvenient in reference to the free transfer of land; suggestions as to them; doubts of the necessity for their continuance, *Rep. ii. App. Lowndes* 23—A Parliamentary return of the net amounts received by the Crown annually during the last five years, by means of its lien on lands, would furnish much useful information, *ib.* 24.

*Cumberland.* Number of properties according to the land tax assessment of 1798; area, and number of parishes, *Rep. ii.* 74.

*Curiosity.* The difficulties presented to persons wholly unacquainted with the title will tend to prevent recourse to the register from motives of curiosity, *Rep. ii.* 57.

*Current Expenses.* The current expenses could easily be defrayed from the charges of registration and search, *Rep. ii. App. Balfour* 33.

*Custody of Deeds.* Evils arising from the present state of the law as to the custody of deeds, *Rep. ii.* 15—Many actions relating to the custody of deeds would be prevented by a general register, *ib.* 18—Questions now arising as to the custody of deeds would be settled by original deeds being deposited in the registry, *Rep. ii. App. Lindsay* 103—The security derived from the delivery over of deeds, being wanting in many cases of fair transactions, where the nature of the property conveyed will not allow of such delivery, *Meymott* 105.

*Customs of Manors.* Registration should extend to customs of manors relative to tenure, order of descent, fines, forfeitures, and widows' rights, *Rep. ii. App. Balfour* 31—In copyholds, many evils exist from the ignorance of local customs, *ib.* 33.

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*D'Aguesseau, Chancellor.* Answer to the questions of Chancellor D'Aguesseau to the Parliaments of France on the subject of notice, *Rep. ii.* 39.

*Damages.* Suggestions as to damages in actions by a devisee against an heir or supposed devisee, who had availed himself of the proposed registry law to sell the devised estate, *Rep. ii.* 41—Suggestions with regard to damages in actions against a vendor or mortgagor who should fraudulently defeat his own grant by a subsequent conveyance, *ib.*

*Date of Instruments.* As the date of instruments in some cases must determine their fate, under 27 Eliz. c. 4, the records would afford decided proof in any question arising upon this statute, *Rep. ii. App. Balfour* 33.

*Date of Registration.* In Jamaica, the deed is considered as registered from the time it is delivered to the registry officer; mode in which he afterwards proceeds; such a regulation ought to be adopted as part of a plan of registration, *Rep. ii. App. Burge* 43.

*Dates and Numbers.* Convenience will be afforded by adding the dates of the registered instruments, and annexing to each document a number according to its order in the class, *Rep. ii.* 49—Proposal, that the documents indexed in a class be numbered consecutively, and the index (in addition to other numbers and references) contain the date of the document, the date of the registry, and a reference to the book and page in which the registered deed is to be found, *ib.* 53.

*Dearle v. Hall.* Reference to this case (3 Russ. p. i.) relative to equitable interests, *Rep. ii.* 13.



*Death of Parties and Witnesses.* Suggestion for registration of deeds after the death of parties, *Rep. ii. App. Adlington 75*—Proof necessary to be made in New York; how certified, *Rep. ii. App. 479*—Proof of deed in New York when witnesses are dead, *i.*

*Debtors and Creditors.* How it is possible that evils may arise from deeds being unregistered in cases of debtor and creditor, *Rep. ii. 40.*

*Declarations of Trust.* All dispositions of property which involve greater intricacy than it might be deemed expedient to admit in the registry, should be effected by a declaration of trust, *Rep. ii. App. Fonnereau 97*—Probable effect of a registry where the execution of a declaration of trust is prevented by unexpected death, *Nash 108.*

*Decrees in Equity.* In what cases decrees or orders in equity should be registered, *Rep. ii. 30*—Memorials of decrees or orders of equity, and notices of bills and appeals, should be authenticated by the signature of the proper officer, *ib. 34.*

#### DEEDS :

##### 1. Generally.

##### 2. Recommendations and Suggestions as to the Registration of Deeds.

##### 1. Generally :

When a title is made out through a deed, the purchaser has constructive notice of every fact to the knowledge of which that deed leads, *Rep. ii. 12*—There are frequent cases where many persons are interested in the same deeds, *ib. 15*—Number of *ad valorem* duties on deeds not specified, exclusive of leases for a year, in 1825, *ib. 70*—All deeds by which real property is affected are derived either from the common law or the Statute of Uses, *Rep. ii. App. Bacon 61.*

##### 2. Recommendations and Suggestions as to the Registration of Deeds :

In the Bedford Level, in Scotland, and in the colonies, the registry is an enrolment of the instrument, *Rep. ii. 31*—Recommendation, that instruments should be registered at length, with certain exceptions, *ib.*—Estimate of the number of deeds that would be required to be registered in England and Wales in each year, *ib. 34*—Benefit which would be derived from a register, by deeds being lessened in number, *ib. 63*—The number of transactions during the next century will exceed those of the last, notwithstanding the great diminution of assignments of outstanding terms and other deeds, *ib. 75*—Amount received for the number of deeds registered, and fees in the local registries 1827–1829, *ib. 76, 77.*

Deeds should be registered *inter vivos*, consisting of feoffments, bargains and sale, gift, grant, lease, exchange, confirmation, release, surrender, enfranchisement, indenture to lead uses of a fine and recovery, indenture to stand seised to uses and defeasances, *Rep. ii. App. Balfour 31*—All deeds and other instruments in writing (except wills and copyhold assurances) intended to affect lands or incorporeal hereditaments, should be deposited in the Register-office for registry, *Bacon 64*—Suggestion that all instruments affecting real property should be registered; purchase articles, equitable liens, releases, leases by bishops, corporate bodies, &c. *Atkinson 82*—List of documents that should be subject to registration, *Coles 92*—Every instrument which either conveys an interest in land, or which imposes any charge upon it, or releases it from such charge, should be registered, *Hawkins 98*—Nature of deeds that should be enrolled in a metropolitan register-office, *Keightley 100*—Every assurance should contain a declaration of the several deeds relating to the title, *Montrieu 106.*

*Defeasances.* They are required to be recorded with mortgages in New York, *Rep. ii. App. 476.*

*Defective Memorials.* Deeds should not be vitiated by defective memorials, *Rep. ii. App. Coles 94.*

*Defects of Title.* The disclosure which might be afforded by a registry of defects of title may be considered in two points of view, *Rep. ii. 23*—The objection that a register may expose defects in title, and cause litigation and expense, answered, *Rep. ii. App. Adlington 72*—A registry would suggest defects of title, which are always defects of form; this would be objectionable, *Nash 108.*

*Delay.* Delay is one objection urged against a register; answer thereto, *Rep. ii. 20*—Delay in effecting sales and mortgages would be diminished by a general registry, *Rep. ii. App. Wilson 47*—Increased delay and expense that would be occasioned by the establishment of a general registry, *Howe 99; Smith and Wilkinson 113; Watson 116.*

*Delivery of Sasine.* In Scotland, every transfer of real property is made by delivery of sasine upon the lands, before a notary and witnesses, who record the same, *Rep. ii. App. Balfour 33.*

Departments.

**Departments.** Departments into which the registry should be divided, and nature of the business of each department considered, *Rep. ii. App. Woodroffe* 127-129.

**Deposit of Deeds, Wills, &c.** A deed not produced may have been executed by a deceased party, and deposited with a stranger, and its existence may be unknown until casually discovered, *Rep. ii. 5*—Advantages of the proposed plan as a depository of deeds, *Rep. ii. 57*, and *App. Spence* 258—Suggested regulations for the deposit of deeds, prior to the registry at the Register-office, for safe custody, *Rep. 64*—Persons might be allowed to deposit their wills in the proposed register office during their lifetime, *Rep. ii. 64*, and *App. Lindsay* 103—Solicitors might be empowered to deposit deeds in their hands in the registry, a book being kept for entering the particulars, *Lindsay* 103.

Power should be given to receive and retain deeds existing prior to the registry, to give office copies of such deeds, *Rep. ii. App. Walters* 50—No lien or title should be conferred by deposit of deeds, unaccompanied by any writing, *Bacon* 65.

Objections to the plan of depositing all deeds in one place, and arranging them for inspection, *Rep. ii. App. Walters* 67; *Adlington* 76—Registering all instruments affecting land will abolish mortgage, by deposit of title-deeds, *Hawkins* 98—Doubts as to the expediency of allowing the deposit of deeds, *Gilbert* 143.

Questions: whether parties might be allowed to deposit old deeds at the Register-office? *Rep. ii. App. 142*—Written answers, 148-293; *vivâ voce* answers, 308-431—Who should be entitled to deposit them, and what evidence should be required of such right? *Rep. ii. App. 142*—Written answers, 153-293; *vivâ voce* answers, 308-431—Whether a court of equity might not, at the suit of persons having partial interests in the estates, be enabled to compel the deposit of deeds? *Rep. ii. App. 142*—Written answers, 146-293; *vivâ voce* answers, 308-431—Whether deeds so deposited might be withdrawn under any circumstances? *Rep. ii. App. 142*—Written answers, 153-293; *vivâ voce* answers, 328-423—Whether an official examined copy might be evidence, unless notice to produce the original were given? *Rep. ii. App. 142*—Written answers, 148-293; *vivâ voce* answers, 308-431—Whether a deposit of deeds at the Register-office might be made a satisfaction of existing covenants for production? *Rep. ii. App. 142*—Written answers, 148-293; *vivâ voce* answers, 328-423—Question as to whom and under what regulations office copies of such deeds should be delivered? *Rep. ii. App. 142*—Written answers, 150-293; *vivâ voce* answers, 308-431—Whether it would be advisable to allow parties to deposit their wills at the Register-office? *Rep. ii. App. 142*—Written answers, 148-298; *vivâ voce* answers, 308-431—Question as to under what regulations they should be allowed to withdraw them? *Rep. ii. App. 142*—Written answers, 148-293; *vivâ voce* answers, 336-431—And also under what regulations the will should be delivered from the Register-office after the death of the testator, *Rep. ii. App. 142*—Written answers, 148-293; *vivâ voce* answers, 336-431.

**Deposit Office.** Nature of the business to be transacted in the proposed deposit office, *Rep. ii. App. Woodroffe* 128—Detail of the manner of performing the business therein, *ib.* 130.

**Depreciation of Real Property.** Manner in which special conditions of sale may seriously affect the price to be given for the estate, *Rep. ii. 16*—By removing the present evils attending the transfer of real property, a register would have a tendency to increase the value of estates, *ib.* 18.

**Deputy Registrars.** Should be appointed in the provincial cities, and chief provincial towns, for taking proofs of deeds, *Rep. ii. App. Bacon* 65.

**Derbyshire.** Number of properties according to the land tax assessment of 1798; area, and number of parishes, *Rep. ii. 74*—Proceedings on a Bill for registering deeds of lands in Derby, brought into the House of Commons, 9 February 1732, *Rep. ii. App. Bramwell* 87.

**Descent.** Disregard of reasonable forms and solemnities in the practice as to descents; remedy proposed, *Rep. ii. App. Lowndes* 18—The registry may facilitate tracing titles by descent, which cannot be done now from parochial registries, *Lindsay* 103.

**Destruction of Deeds.** Frauds are sometimes committed by the destruction of deeds, *Rep. ii. App. Adlington* 71—The destruction of deeds will be prevented by a general register, *ib.* 72—Frauds on children or reversioners, by the destruction of settlements, *Bird* 83.

**Devisees in Trust.** Conveyances by devisees in trust to the parties interested to be registered in the department of wills, *Rep. ii. 55*.

**Devises.** Proposed mode of indexing documents in which description by reference to a preceding devise is essential, *Rep. ii. 46*.

**Devon.** Number of properties according to the land-tax assessment of 1798; area, parishes, &c., *Rep. ii. 73*.

*Directory to Symbols.* The cases of total want of documentary evidence and ignorance of title, should be met by a directory to symbols, *Rep. ii. 51*—Table recommended for the directory by Mr. William Wood Humphrey, which should be accompanied by an index to the names, dictionary-wise, to be made up at stated periods, *ib. 51, note*—Proposal, that the officers of the register keep a directory to the symbols of titles, consisting of alphabetical lists of the names of parties to registered deeds, with some particulars as to the parcels, *ib. 53*.

#### DISCLOSURE :

1. *Objections to a General Register as giving too much publicity to Private Affairs.*

2. *Answers to these Objections, and Opinions in favour of a General Registry.*

1. *Objections to a General Register as giving too much publicity to Private Affairs :*

There are three classes of cases in which objection may be made to disclosure, *Rep. ii. 22*—Objection to a general register, on the ground of publicity, *Dugmore 10*—Great difficulty there is in answering the objections made to a registry, on the ground of disclosing titles, *Burge 44*—Registration will lead to the recording blots, oversights, and other inaccuracies, and expose individual difficulties and incumbrances, *Bishop 85*—The publicity that registration has a tendency to occasion would be objectionable to many proprietors, *Howe 99*—Evils that would arise from the disclosure of the incumbrances on an estate, under a registry, *Nash 108*.

Objection to the exposure of the circumstances and conditions of private families to the impertinent and mischievous curiosity of many, *Rep. ii. App. Smith and Wilkinson, 112*—Disadvantage and loss of credit would be incident to the exposure of family arrangements and of incumbrances, *Sweet 114*—Evils of a register as regards the exposure of mortgage securities, *Thompson 115*—Objection to a registry disclosing a man's private affairs as regards his real property, *Weatherby 117*.

Objection to a general register on account of the exposure it would cause in a variety of transactions, *Rep. ii. App. Wood 127*—The privacy attending transactions in loans, settlements, &c. would be invaded by a general registry, *Wyatt 132*—Great evils that will arise from the disclosure of titles under a register; the Newcastle case instanced, *Dixon 181*—Aversion of persons totally unconnected with mercantile affairs to the publication of their pecuniary arrangements, *Freshfield 227*.

2. *Answers to these Objections, and Opinions in favour of a General Registry :*

Objection made to a general registry on the ground of disclosure of private transactions; answers to this objection, *Rep. ii. 21 and App. Bird 83; Fonnereau 97; White 119*—If the disclosure were great, the evils of it would be overbalanced by other advantages, and in itself it would be productive of more good than evil, *Rep. ii. 22*—The plan proposed is adapted to admit of provisions for preventing disclosure, *ib. 57*.

Disclosure of titles under a full registry, though it may be an evil, will, by its security, be productive of great advantage, *Rep. ii. App. Walters 8*—The objections to publicity which a full inrolment would give, have been much overrated, *Loundes 17*—A system might be contrived to obviate every objection on the ground of disclosure, *Balfour 32*—Few unencumbered owners would object to the notoriety of their ownership, *Longley 45*.

It is not desirable that more publicity to private transactions should be requisite than is necessary to give security against fraud and latent claims, *Rep. ii. App. Wilson 46*—Unnecessary disclosure should be avoided in a registry, *Measure 71*—Manner in which the Register Act for the North Riding of Yorkshire prevents unnecessary disclosure, *Atkinson 80*—Registration gives a publicity to titles, which has its advantages and disadvantages, *Bramwell 87*.

The apprehended exposure of title is an evil altogether imaginary; title-deeds are not likely to excite curiosity, and curiosity would not gratify itself at the expense of the fees of searching, *Rep. ii. App. Coles 90*—The publicity of registration would not be detrimental, *Hodgson 98*—The inconvenience arising from disclosure by a registry will not be very often or very seriously felt; it is not much felt in the register counties, *Leach 101*—The objection to a register, on the ground of publicity to private transactions, would be greatly outweighed by the numerous advantages of such a measure, *Wilkins 120*—Necessity for a general register, the publicity of which will prevent fraudulent incumbrances, *Wilkinson 124*—Disclosure of titles is one of the greatest recommendations of a registry, *Lake 235*.

*Dissenters.* Advantages of a Hundred registry of births, marriages, and deaths, to embrace the case of Dissenters, *Rep. ii. App. Loundes 20*.

*Distant Properties.* The registry will have a most pernicious effect in dealing with properties in distant counties, on account of the expense, *Rep. ii. App. Wimburn 126*.

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**District Registers.** Advantages and disadvantages of district registers, *Rep. ii. 27*—The plan proposed might easily be made applicable to district registers, *ib. 28*—England and Wales should be divided into districts, each consisting of a county, or two or more counties; a separate set of books for the registration or deposit of deeds, with a separate set of indexes to the deeds, classified, should be kept for each district, *ib. 51, 52, 72*—Propositions on the subject, *ib. 52, 72*—Table showing the division of England and Wales into nine districts, for the purposes of registration, stating the counties, number of properties, according to the land-tax assessment of 1798; population 1821; area in square miles; number of parishes, *ib. 72-74*.

Suggestions with regard to a parochial or small district registration, *Rep. ii. App. Bell 37*—District registration preferred to county registration; plan proposed for four offices, *Wilson 46*—The districts should be within a small compass, *Hodgson 99*—The smallness of the district would increase the notoriety of a registry, *Nash 108*—A register would be practicable in small populous places; in large counties registers should be appointed in the different hundreds or justices' divisions, or some intermediate district, *Ridding 110*—The smaller the circle comprised within the jurisdiction of each register office the better, *Watson 116*.

Opinions in favour of a district or county registry, *Rep. ii. App. Wilson 179; A. Atkinson 203; T. C. Atkinson 207; Carr 213; Carrett 215; Hodgson 230; Lane 237; Messiter 245; Pybus 250; Radford 251; Walton 274; Whincop 275; Hall 288; Humphrey 378*.

**Division of Ownership.** Where deeds relate to land which has been divided as to ownership, it is obvious they can attend the possession of only one part of the land, *Rep. ii. 4*.

**Dixon, Robert.** Communication from Robert Dixon, of Chancery Lane, giving his opinion, with the grounds thereof, that the advantages of a general register will be greatly outweighed by its disadvantages, *Rep. ii. App. 179-182*.

**Doctors' Commons.** No serious complaint has been made of the facility with which wills can be seen at Doctors' Commons, *Rep. ii. 21*.

**Documentary Evidence.** A general registry might be made the means of affording facility as to giving documents in evidence, *Rep. ii. 43*—If deeds relating to a particular title are brought together in the index, a reference to the class enables the purchaser to ascertain whether all the documentary evidence has been produced to him, and to call for any instruments appearing by the register to be wanting, *ib. 44*—The registry should embrace all the documentary evidence of title to all the property in the kingdom, both real and personal, *Rep. ii. App. Hayes 55*.

**Documentary Titles.** To be complete, it must be known that all documents are produced, *Rep. ii. 3*.

**Documents.** Regulations with regard to the documents to be registered, *Rep. ii. 28*—All conveyances and contracts for sale of land, all charges or contracts for charges on land, all judgments, administrations, bankruptcies, and all proceedings or documents in any degree affecting title, should be registered in one office, *Rep. ii. App. Burge 43*.

**Doe v. Hilder.** Reference to this case (2 Barn. & Ald. 782), as to presumed surrender of terms, *Rep. ii. 12*.

**Doe v. Jesson.** Reference to this case (6 East, p. 80), with regard to a party beyond the seas for seven years, *Rep. ii. App. Lowndes 25*.

**Doe v. Wright.** Reference to this case (2 Barn. & Ald. 710), as to presumed surrender of terms, *Rep. ii. 12*.

**Dorset.** Number of properties according to the land-tax assessment of 1798; area; parishes, *Rep. ii. 73*.

**Dower.** Dower is the only interest against which a purchaser with notice can protect himself by the assignment of a term, *Rep. ii. 9*—The alterations in the law of dower proposed in the first report will prevent the objection of assignment of terms, as protections against dower, *ib. 14*—According to the plan proposed by witness, the term will protect the dower, *Rep. ii. App. Walters 8, note \**—The title to dower ought to be duly considered, *Carrett 217*.

**Drawing Deeds.** Scale of remuneration proposed for drawing deeds, with a view to brevity, *Rep. ii. App. Lowndes 16*.

**Drummond, A. B.** Statement by Mr. A. B. Drummond, that a register of deeds affecting real estates, would be of advantage to the commercial part of the country; the disclosure afforded thereby would be productive of good, *Rep. ii. App. 545*.

**Dugdale, Sir William.** Extract from Hamper's life of Sir Wm. Dugdale, showing his attempt, in the reign of Charles 2, to establish a registry of descents for the nobility, *Rep. ii. App. Lowndes 19*.

*Dugmore, Thomas.* Communication from Thomas Dugmore, of Thetford, against the establishment of a general registry, *Rep. ii. App. 95, 96.*

*Dugmore, William.* Communication from William Dugmore, of Lincoln's-inn, stating objections to the system of attendant terms, and to a general registry; and suggesting a plan by which each title shall carry its own register, *Rep. ii. App. 9, 10.*

*Duplicate Deeds.* Duplicates are often executed of important deeds, such as settlements; these sometimes afford to more than one party at the same time the presumption of ownership from the possession of deeds, *Rep. ii. 4*—When parties are desirous of having duplicate originals, the two should be compared at the office, and a certificate of registry endorsed on the one returned; the stamps might be affixed on either, *ib. 31.*

Proposition for deeds being executed in duplicate, one part, stamped, to be for the parties, the other unstamped, but on parchment or vellum, for the register, *Rep. ii. App. Lowndes 17*—Duplicate deeds might be made, and the duplicate be made the record, *Walters 51*—Suggestions for the execution of duplicate deeds, to be written bookwise, *Hayes 56*—An unstamped duplicate, written bookways, should be executed for registration, *White 57*—The execution of the duplicate should be proved by the oath of a witness able to verify the handwriting of the parties, *ib.*

*Durham.* Number of properties according to the land-tax assessment of 1798; area, and number of parishes, *Rep. ii. 74.*

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*Ecclesiastical Courts.* Recommendation as to the proper court in which the will of a trustee of a term should be proved, or administration to his effects taken out, *Rep. ii. 67. 69.*

*Edinburgh.* Nearly the whole of the Scotch conveyancing is transacted in Edinburgh, *Rep. ii. App. Walters 68.*

*Eighth District.* Proposition of the commissioners, that the eighth district consist of Yorkshire and the county of Durham; properties according to land-tax assessment 1798; population; area; parishes, &c. *Rep. ii. 74.*

*Ejectments.* The limitation in cases of ejectment should be 10 in lieu of 20 years, *Rep. ii. App. Keightley 100.*

*Elective Franchise.* Suggestion, that the register of deeds might be made evidence of the freeholder's right of voting, *Rep. ii. App. Ridding 110.*

*Elegit.* Advantage that would result in cases of elegit, if a memorial contained a record of titles, *Rep. ii. App. Lane 14*—Amendment of the law required as to this species of execution, *Hodgson 99.*

*Enforcing Registration.* Registration of a deed to be compelled by a judge of one of the superior Courts at Westminster, on application, in a summary way, *Rep. ii. 32.*

*English Counties.* The system of registration established in two of the most considerable counties in England, has been inquired into, *Rep. ii. 4.*

*Engrossment Book.* Suggestion, that instruments be entered verbatim in the book of engrossment, precisely in order of the minute-book, and the keeper to retain possession of the instruments till so entered, *Rep. ii. App. Balfour 32.*

*Entails.* Difficulty with regard to a 60 years' title in cases of entails; case of hardship mentioned, *Rep. ii. App. Grover 12*—Suggestions for the amendment of Act 7 Geo. 4, c. 45, relative to the sale of entailed estates, *ib. 295.*

*Equitable Claims.* In what cases the effect of a registry might suggest or assist an inequitable claim, *Rep. ii. App. Nash 108.*

*Equitable Estates.* Insecurity of the title of equitable estates from subsequent transactions, *Rep. ii. 15*—Benefit would arise from a general register, from equitable and secondary estates becoming marketable, *ib. 63.*

*Equitable Interests.* A general registry may be eventually extended to equitable interests, *Rep. ii. 64*—Equitable interests should be liable to judgments, *Rep. ii. App. Lowndes 23*—Equitable as well as legal interests should be registered, *Measure 71.*

*Equitable Interference.* Equitable interference on the ground of notice, either actual or constructive, should be prohibited, *Rep. ii. App. Askew 48.*

*Equitable Mortgages.* That a register will occasion the conveyance of interests now neglected will be an advantage, rather than an objection, *Rep. ii. 20*—Caveats may be resorted to as a substitute for the registration of equitable mortgages and deeds, for temporary purposes, the registration of which may be suspended or avoided, *ib.*—Suggestions as to registration of equitable mortgages, by deposit of deeds with and without a memorandum, *ib.*

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Equitable mortgages, by deposit of title-deeds, should be done away with, *Rep. ii. App. White 57*—The registry of all equitable mortgages should be required, *Leach 102*—Advantage of loans by deposit of title-deeds; this mode of security would be weakened by a registry, and would be objectionable, *Nash 109*—How far the doctrine of equitable mortgages will be destroyed by a registry, *Watson 116*—Persons losing money on equitable mortgages are not entitled to common sympathy, much less to legislative interference, *Dixon 180*.

Questions circulated by the commissioners whether, as against unregistered instruments, equitable mortgages created by a deposit of title-deeds should be taken away? *Rep. ii. App. 140*—Written answers, 146–291; *viva voce* answers, 305–437—Whether there should be an equitable lien for the purchase money unless notice appear upon the register that it remains unpaid? *Rep. ii. App. 140*—Written answers, 146–291; *viva voce* answers, 305–437.

*Equitable Notice.* Evils arising from the doctrine of equitable notice, *Rep. ii. App. Walters 7; Balfour 30, 31; White 57; Coles 89, 94*—Though a preference is declared in favour of registered deeds, the doctrine of equitable notice is liable to defeat the advantage of prior registry, *Balfour 29*—Suggestions for amending the law with regard to equitable notice, *Wilson 47*—The outcry against the equitable doctrine of notice is ill considered, and if the doctrine were to be removed, it must shortly be re-established, *Park 60*.

*Equity.* The protection of terms is rendered precarious by the rules of equity respecting notice, and by the doctrine of presumption, *Rep. ii. 11*—Where there was no covenant to produce, or an ineffectual one, it was supposed equity would interfere, but that is now doubtful, *ib. 16*—It seems best, after excluding the case of mere notice, to leave open the jurisdiction of equity in all cases of fraud, *ib. 42*—Jurisdiction to be given to equity in cases of mistakes and fraud, *ib. 43*—All regulations proposed as to evidence should, with suitable modifications, be applied to suits in equity, *ib.*—The jurisdiction of courts of equity arising on questions of notice, should be abolished, *Rep. ii. App. Lindsay 102*—Whatever registry may be established, the interference of equity should not be too rigidly excluded, *Smyth 114*.

*Equity, Courts of.* Manner in which courts of equity have prevented the good that might have been effected by local registries, *Rep. ii. App. Walters 7*—A court of equity should have the power of directing an unregistered deed to be registered, but without giving it any retrospective effect, *ib. 51*—Increase of business in courts of equity caused by the want of a registry, *Bacon 62*.

*Equity Decisions.* The inconveniences arising from the deficiency of the present register Acts have been increased by equity decisions on those Acts, *Rep. ii. App. Bacon 63*—Equity decisions on the doctrine of notice, and on the Statute of Frauds, have opened the door to perjury and litigation, *ib.*

*Equity Proceedings.* Proceedings in equity need not be registered at length, *Rep. ii. 31*.

*Equity of Redemption.* Nature of the equity of redemption by mortgagors, *Rep. ii. 8*—In what way registration holds out some advantages as regards equities of redemption, *Rep. ii. App. Watson 115*—Mortgagors should deliver to mortgagees an instrument admitting their right to redeem; effect thereof, *ib.*

*Erasures and Corrections.* Neither erasure nor correction should be allowed in the record, except for very urgent reasons, recognized as reasonable by some competent authority, and such correction ought merely to take effect from its own date, *Rep. ii. App. Balfour 31*—Instances have occurred of erasures and alterations in deeds after execution, *Adlington 71*—Fraudulent erasures, alterations, and additions would be prevented by a register, *ib. 72*.

*Errors in Deeds and Wills.* Disclosure of defects of title from errors in deeds, would be very rare; errors in wills, which are entirely open to the public, are more frequent than in deeds, *Rep. ii. 23*—Such disclosure in future deeds would not be an objection to a register; any measure that would tend to disturb present possession would be mischievous, *ib. 24*—The requisites to a valid registration upon the proposed plan, are so few and simple, that with proper checks in the office, it is almost impossible that error should occur, except in cases of mistake as to title, *ib. 62*.

*Essex.* Number of properties according to the land-tax assessment of 1798; area, and number of parishes, *Rep. ii. 73*.

*Estate Indexes.* Indexes referring to every different estate, the several estates being identified and referred to by numbers marked on a map or survey; these are used in the Bedford Level, in the different states of Germany, and in other countries, *Rep. ii. 24*—Advantages of indexes referring to estates; nature of the objections to them, *ib. 26*.

**Estates.** Every document creating or transferring any estate, or charge, should be registered, with certain exceptions, *Rep. ii. 28*—Defects in the law as regards estates *pour autre vie*; the statute 11 Geo. 2, c. 19, does not apply to the executors of a tenant *pour autre vie*, or remainder men, and the statute 14 Geo. 2, c. 20, does not extend to copyholds, *Rep. ii. App. Briggs 6*.

**European States.** Registers exist in several of the European states, *Rep. ii. 19*—Registers are considered productive of essential benefits therein, *ib.*—No nation in Europe is without a registry, and in some it has been brought to great perfection, *Rep. ii. App. Walters 7*.

**Evidence.** The maxim that the best or highest degree of evidence is to be produced, has not been uniformly adhered to by the common law itself, and should not in every case be requisite, *Rep. ii. 44*—Benefit would arise from a registry, inasmuch as the difficulty and expense of giving deeds in evidence in courts of justice would be greatly diminished, *ib. 63*—In the West India colonies, and in some of the States, the deed must be registered before it can be received in evidence; this course recommended for England, *Rep. ii. App. Burge 42*—A copy of the entry on the registry of an instrument, signed by the registrar, should be evidence of so much as is stated on the registry, *Bacon 65*—Advantages which will result from making the proposed registry evidence, *Bacon 66*; *Adlington 72. 74*; *Atkinson 80*; *Fonnereau 97*; *Watson 116*; *Wyatt 132*—Cases in which duplicates, or office copy deeds, should be allowed to be evidence, *Adlington 75*.

Instruments affecting real property should not be received in evidence till after registration, *Rep. ii. App. Adlington 76*—Certified copies of memorials should be admitted as evidence to prove the execution of a deed, *Atkinson 82*; *Bishop 85*; *Coles 94*; *Keightley 100*—The registry should be sufficient evidence in the absence of the originals, *Fonnereau 96*—The particulars being recorded, and made secondary evidence, will prevent the giving of a false colour to transactions in case of the loss or concealment of the original deeds, *Leach 102*—Printed copies of abstracts of deeds might be made evidence, in the same manner as Acts of Parliament, *Smyth 113*—An attested copy of the deed itself ought to be evidence of every thing not contained in the printed registry, *ib. 114*.

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**Examination of Deeds.** Suggestions with regard to the examination of deeds, with duplicate, by the registrar, for the purpose of being given in evidence, *Rep. ii. App. Lowndes 17*—The registrar having only to examine, and not to transcribe, would enable him to keep pace with his work, and the public would not have to wait long for their deeds, *ib.*

**Exchanges and Partitions.** Plan suggested as to the enrolment of deeds in cases of exchanges and partitions, so as to make the different deeds evidence, *Rep. ii. App. Lowndes 17*.

**Execution of Deeds.** Protection may be afforded by a caveat where time is required for the execution of a deed by different parties, *Rep. ii. 29*—Plan that should be adopted as regards registry in the event of all the parties not executing at one time, *Rep. ii. App. Adlington 74*—Answer to the objection to a registry on the ground of additional trouble to parties at the time of the execution of their deeds, *Bird 83*—Deeds ten years old and upwards should be admitted in evidence without proof of execution, *Keightley 100*—Execution of deeds should be acknowledged by some of the conveying parties before some competent authority, *Lindsay 103*—Deeds are frequently executed without the presence of a professional adviser; they should be authenticated by affidavit, *Farrer 411*.

**Executors of Trustees.** Mode of making available an assignment of a term from the executor of a trustee whose will has been proved in a wrong court, *Rep. ii. 67*.

**Executory Contracts.** The law relating to executory contracts requires revision, *Rep. ii. 32*.

**Exemptions from Registry.** The only exemptions from registry should be copyhold and customary lands, and leases for short terms, *Rep. ii. App. Walters 51*.

**Existing Incumbrances.** Doubts arose in the commission at the time of the Commonwealth, whether a proposed county registry should be so far retrospective as to compel the registry of existing incumbrances which were not decided at the close of that commission, *Rep. ii. 18*.

*Existing*



*Existing Titles.* The register proposed would not include instruments executed previously to the time of its commencement, and there would be no disclosure of existing titles or prior transactions, *Rep.* ii. 22.

#### EXPENSE OF A GENERAL REGISTER :

1. *Estimated Expense of the establishment of a General Register ; buildings, fittings, arrangements, &c. ; suggestion as to how this might be defrayed.*
2. *Expenses which will be diminished by the establishment of a General Register ; advantages which would attend such establishment.*
3. *Objections to a General Register, on the ground of Expense.*

1. *Estimated Expense of the establishment of a General Register ; buildings, fittings, arrangements, &c. ; suggestion as to how this might be defrayed :*

The expense is stated as a ground of objection to a general register ; this will be moderate ; evidence upon which this conclusion is come to, *Rep.* ii. 19—Statement as to the estimated expenses of the establishment of a general register, *ib.* 70 *et seq.*—A proper return for the money expended in building ought not to exceed 1,000*l.* per annum, *ib.* 76—Answers to the objections made on the ground of the expense of the first establishment of a registry, *Rep.* ii. *App.* Bacon 63—If Government advance the first outlay for buildings, the fees will be sufficient for the subsequent maintenance, *Adlington* 73—In due time, the fees received would form a sufficient fund to meet the expense of buildings, *Lindsay* 103—Proposed mode of defraying the expense of a register, by sale of printed copies of abstracts of deeds, *Smyth* 114.

2. *Expenses which will be diminished by the establishment of a General Register ; advantages which would attend such establishment :*

Suggestion as to the average expense of one registration, *Rep.* ii. 20—Detail of expenses that will be saved by the establishment of a register, *ib.*—The costs to be occasioned by a register will bear no proportion to those which will be saved, and a diminution of expense will be one of the great and certain benefits afforded by it, *ib.*—The expense of registration should be inconsiderable, *Rep.* ii. *App.* Butler 37—It would be beneficial if the expense of registration were to increase in a ratio with the length of the deed, *Hayes* 56, *note.*

Probable benefit which will arise from a register, by the expenses attending conveyance being materially diminished, *Rep.* ii. 63—The expense of transfer will be diminished by a registry, *Rep.* ii. *App.* Longley 45—The expenses of alienation would be greatly diminished by a general register, *Wilson* 47—The expense of registration would be much less than what is now occasioned by the precautions against secret conveyances and incumbrances, *Bacon* 63—Saving of expense that would be effected by a general register, *Adlington* 77—The expense attending a sale or mortgage will be materially reduced under a registry, *Lindsay* 103—Though enrolling the whole deed would augment the expense, yet there would be a considerable saving in searches and attested copies, *Wilkins* 121.

Even if the expense of a registry at length should be great, the advantages attending it will be greater, *Rep.* ii. *App.* Walters 8—The expenses would be more than counterbalanced by the advantages of a well-regulated system of registration, *Coles* 90—If not attended with considerable expense, a registry would be desirable, *Ridding* 110—The expense of a general register would be nothing in comparison to the advantages that would be produced thereby, *White* 119—Any objection on the ground of expense would be far outweighed by the advantages to be derived from a general register, *Woodrooffe* 127.

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The expenses attendant upon registration would be a perpetual charge upon real property, *Rep.* ii. *App.* Atkinson 79—Suggestions as to a voluntary registry of property in the first instance, to save expense, *Fonnereau* 97—By a general registry an additional expense would be occasioned in every transaction relating to real property, which would be sensibly felt by many owners of small properties, *Howe* 99 ; *Weatherby* 117—A registry would entail a great expense on parties taking a title, *Keightley* 100—The principal effect to be attributed to registration is a considerable increase of expense to owners of real property, without their deriving adequate advantage, *Nares* 107—Various expenses attendant upon a transfer of real property at present, and which will be increased by registration, *ib.* 108—Suggestion for ascertaining whether the expense of transfer is not greater in a register county than in another county, *ib.*

Items of expense that would be increased by a registry, *Rep.* ii. *App.* Nash 109—The registry of deeds would tend considerably to increase the expense of conveyancing, *Ridding* 110 ; *Wyatt* 132—A registry would be productive of no real good, and would add considerable expense, *Thomson* 115—Objection to the trouble and expense that would be caused by a general registry, *Wood* 127—Doubts whether the benefit derivable from registration would be commensurate to the attendant expenses, *Woollcombe* 131.



*Extracts from Records.* Suggestion, that parties requiring extracts from the records always be supplied on paying the fees, *Rep. ii. App. Balfour 32*—Suggestion as to supplying parties with extracts from the register by the registrar, *Keightley 100*.

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*Fabrication of Deeds.* A general register would afford considerable security against fabrication of deeds, *Rep. ii. 17*.

*Fairbanks, C. R.* Notes on the system of registration in Nova Scotia, by C. R. Fairbanks, *Rep. ii. App. 480*.

*False Credit.* Manner in which registration will prevent false credit, *Rep. ii. App. Thompson 274*.

*False Testimony.* Benefit will be produced by the register, by the attempts at supporting and defeating claims by false testimony being prevented or materially checked, *Rep. ii. 63*.

*False Titles.* Cases of false titles made by suppression of deeds, *Rep. ii. 5*—A registry would facilitate artful and dishonest persons in trumping up a title dovetailing with the registry, *Rep. ii. App. Sweet 114*.

*Family Arrangements.* All family arrangements need not appear upon the register, *Rep. ii. 23*—The objection that a register may expose family arrangements, answered, *Rep. ii. App. Adlington 72*.

*Family and Important Estates.* A registry is desirable, as regards family and important estates, *Rep. ii. App. Bishop 85*.

*Family Memorials.* Proposition for enrolment of pedigree as a family memorial, *Rep. ii. App. Lowndes 19*.

*Farrer, Thomas.* Examination of Thomas Farrer, and answers by him to the commissioners' circular; the register should be open, and metropolitan, and deeds should be registered at length, *Rep. ii. App. 405-411*.

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1. *Proposed Fees on Registration.*2. *Fees on Searches.*1. *Proposed Fees on Registration:*

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2. *Fees on Searches:*

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*Feoffments.* Number of *ad valorem* stamps on feoffments and bargains and sales in 1825, *Rep. ii. 70*—Nature, objects, and uses of the mode of conveyance called feoffment, *Rep. ii. App. Bacon 61*.

*Fictitious Credit.* To prevent fictitious credit would be an important benefit to the public, *Rep. ii. 22*.

*Fifth District.* The fifth district for registration should consist of the counties of Salop, Hereford, Monmouth, the Principality of Wales and Cheshire; number of properties, population, area, and number of parishes, *Rep. ii. 73*.

*Filing Documents.* Proposition, that after engrossment the instruments should be filed in regular order, and a faithful extract returned to the party, with a certificate indorsed by the keeper, describing the book and pages containing the original, *Rep. ii. App. Balfour 32*.

*Fines and Recoveries.* The records will correct the frequent inaccuracies in fines and recoveries, by exhibiting the deeds which follow them, and thus aid the statutory declaration, that possession for twenty years, and possession of the deed, is sufficient to prove the recovery, *Rep. ii. App. Balfour 33*—Manner in which registration, with the addition of other forms, particularly private examination, might supersede fines and recoveries, *White 120*.

*First District.* Proposition of the commissioners that the first registration district contain the county of Middlesex; properties, population, area, parishes &c., *Rep. ii. 72*.

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**Fonnereau, Thomas George.** Communication from T. G. Fonnereau, of Angel-court, Throgmorton-street, showing the advantages of a general registry, and the uselessness of the local registries, *Rep. ii. App. 11*—Also, communication suggesting a registry of landed property, so as to enable the transfer of land in a similar manner to that of the public funds, *ib. 96*—Communication giving, in answer to the commissioners' circular, an opinion in favour of an open register in the metropolis, which register should be at length; advantages and defects in the commissioners' outline, *ib. 220–223*.

**Foreign Countries.** In some countries the regulations respecting registers form the most important part of the law of real property, *Rep. ii. 19*—That the plan of a register is not impracticable, is proved by its having existed in other countries, *Rep. ii. App. Fonnereau 11*—In every kingdom where its advantages are experienced, a register has been highly appreciated, *Balfour 27*—Effect of registration on the Continent, *Park 60*—Nature of the inquiry that should be instituted before the example of foreign states as to registration should be followed in this country, *Watson 117*.

**Forgery of Deeds.** Facilities for forgery of deeds at present; they would be prevented by a general register, *Rep. ii. 17*—The danger of forgery is very slight at present, and will be more so under a registry, *ib. 34*—Benefits would arise from a registry, from the attempts at forgery of deeds being prevented, or materially checked, *ib. 63*.

Forgery and fraud would be prevented by enrolling an executed duplicate, instead of an examined copy, *Rep. ii. App. Lowndes 17*—There are instances of the substitution of forged for genuine documents, *Adlington 71*—The forgery of deeds will be prevented by a register, *ib. 72*.

**Form of Conveyances.** If a more simple form of transferring real property be adopted, the advantages of a register will be increased, and the expense lessened, *Rep. ii. App. Adlington 72*.

**Form of Registry.** Various forms suggested for the purpose of registering deeds, *Rep. ii. App. Bacon 66*—The provisions of Act 52 Geo. 3, c. 146, with certain alterations, are adapted to the purpose of a registry, *Jones 144*.

**Forster, John.** Communication from John Forster, of Lincoln's-Inn, remarking upon the commissioners' plan of registration, and offering the sketch of a system, *Rep. ii. App. 223*.

**Fourth District.** The fourth registration district should consist of the counties of Gloucester, Oxford, Berks, Worcester, Bucks, Warwick, and Northampton; number of properties; population, area, and number of parishes, *Rep. ii. 73*.

**France.** France is considered to derive benefit from registers, *Rep. ii. 19*—The notarial system is adopted in France and Italy, and the notary's attestation authenticates the instrument, *ib. 33*.

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**Fraud.** Cases quoted in which the opportunity of fraud by the suppression of deeds most frequently occurs, and in which no special state of circumstances is requisite, *Rep. ii. 5*—The effect of the system of terms is, to transfer the consequences of fraud from one innocent party to another, *ib. 13*—The system of terms promotes fraud in some instances, *ib.*—The constant occurrence of the opportunities for fraud or mistake is an evil of the present system, *ib. 61*.

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which fraud may be committed from the want of a general register, *Rep. ii. App. Bacon* 62—Great difficulty of attempting frauds under a general registry, *Adlington* 76—Instances of fraud given, which would have been remedied by a registry, *Blanchard* 85—Few instances of fraud in respect to title, which would have been obviated by a registry, *Thompson* 115—Opinion that more fraud will be committed under a register than the system is subject to at present, *Dixon* 180.

**Fraudulent Conveyances.** The statute 27 Elizabeth against fraudulent conveyances takes effect both at law and in equity, even where a purchaser has the fullest knowledge of a settlement, which is defeated by his conveyance, *Rep. ii. 39*—Cause of passing the statutes 13 & 27 Eliz. and 3 Will. & M. against fraudulent conveyances and devises, *Rep. ii. App. Bacon* 62—Fraudulent conveyances would be prevented by a registry, *Ridding* 110—Instance given of a fraudulent conveyance, showing the necessity for a general register, *Wilkins* 121.

**Fraudulent Preferences.** Manner in which fraudulent preferences will be prevented by a registration, *Rep. ii. App. Thompson* 274.

**Fraudulent Registry.** Proposition, that documents fraudulently registered be expungeable on proof of fraud, *Rep. ii. App. Lowndes* 21.

**Freeholders.** Proposed qualifications of freeholders who should vote in the election of a county registrar, *Rep. ii. App. Ostler* 109.

**Freeholds and Leaseholds.** It is presumed that in London, within the bills of mortality, the value of leasehold estates is infinitely greater than that of freehold estates, *Rep. ii. App. Stevens* 260.

**Frere, George.** Answers by George Frere, of Lincoln's-Inn (to the commissioners' circular), giving opinion in favour of a general survey, an open register, one head office, and district branches, and registry at length, *Rep. ii. App. 224-226*.

**Freshfield, J. W.** Communication from J. W. Freshfield, of New Bank-buildings, on the subject of the circular issued by the commissioners, stating objections to a general register, showing the manner in which the West India register is evaded, and stating, that if a register should take place, copyhold securities should be registered, *Rep. ii. App. 227*.

**Funds, Public.** How far a register might be extended to monies in the public funds, *Rep. ii. 64*—Expedition used in the sale and purchase of stock in the public funds, compared with the delay experienced in the transfer of real property, *Rep. ii. App. Hogg* 52—There is no sufficient reason why land should not be transferable as well as the public funds, *Fonnereau* 97.

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**General Devises.** Wills for registration, containing general devises, should be accompanied by a paper stating the local situation of the property intended to be affected, *Rep. ii. App. Bacon* 65.

**General Index.** Doubts whether a general register, with a general index, will not hold out a security not to be realized, *Rep. ii. App. Lake* 234.

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2. *Remarks and Suggestions as to the Practicability of such an Establishment.*
3. *System on which it should be established.*
4. *Doubts as to its Practicability, and Objections to the Establishment of such Registry.*
5. *These Objections considered, and answered.*
6. *Queries of the Commissioners on the subject of a General Register, with Answers thereto.*

1. *Probable Advantages that would result from the Establishment of a General Register:*

Necessity for a general registry to give proof that all necessary documents are produced, *Rep. ii. 3*—Evils which would be removed by a general registry, *ib. 17, 18*—A general register will not be productive of evils of equal importance with those which it will remove, *ib. 18*—The want of a register has been long felt, *ib.*—There is no reason why a general registry should not be beneficial in this country; circumstances

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*Humphry, Joseph.* Examination of J. Humphry, on the commissioners' circular, as to registration; he prefers an open register, and local registers, independent of each other; the registry should be at length, *Rep. ii. App. 372-380.*

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**LOCAL REGISTERS:**

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**MORTGAGES :**

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3. *Objections to a General Registry as regards them.*

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#### NOTICE:

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2. *Advantages of allowing Registration to serve the purpose of Notice.*
3. *Objections to Registration being Notice.*

##### 1. *Explanation of the Doctrine of Notice:*

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*Outstanding Terms.* As many titles must be shown as there are outstanding terms; this is one cause of the great length of abstracts, *Rep. ii. 10*—The inconvenience which might arise from the notice afforded by the register might be remedied by the provision recommended by the Common Law Commissioners for preventing outstanding terms being set up to defeat any ejectment or action except for the purpose of protecting the inheritance, *ib. 14*—With respect to estates and charges prior to the register, the necessity of keeping on foot an outstanding term will only be temporary, and a single assignment afterwards will afford all the protection required, *ib.*—The machinery of attendant terms will be rendered unnecessary by the plan proposed for a general registry, *ib. 55*.

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*Ownership.* A general registry should have in view the greater protection of the ownership of property, *Rep. ii. App. Hayes 55*.

*Oxford.* Number of properties according to the land-tax assessment of 1798; area, parishes, *Rep. ii. 73*.

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*Palgrave, Francis.* Communication from Francis Palgrave, of Duke-street, Westminster, answering certain questions in the commissioners' circular, detailing his views of a register, and speaking in favour of county or district as well as metropolitan registers; suggestions for open registers; and registry at length; suggestion as to building accommodation, and in favour of printing the records of a registry, *Rep. ii. App. 196–199*.

*Pancras, St., Parish.* The gross value of leaseholds supposed to be greater than the gross value of freeholds in the parish of St. Pancras, *Rep. ii. App. Stevens 260*.

*Panizzi, Signor.* Letter from Signor Panizzi to Samuel Duckworth, containing a statement as to the registers in Italy, *Rep. ii. App. 473–475*.

*Parcels.* Notice of parcels in the index unnecessary, *Rep. ii. 49*—Cases in which a specification as to parcels may be inserted in the index, *ib.*—Proposal, that upon sale of part of the property embraced in a class, the conveyance should be transferred to a new class, the vendor to have power to require a specification of the parcels to be entered in the index to the original class, *ib. 53*—Proposal, that the option of introducing a specification of parcels upon the index be extended to cases of the creation of partial interests in part of the lands embraced in a class, *ib.*—Effect of error in the column "specifications," *ib. 58*.

*Parish Registers.* Evils of parish registers being exposed to damp and neglect, *Rep. ii. App. Jones 144*.

*Parishes.* In England there are no well-defined districts smaller than parishes; in one parish in Middlesex there were in 1829, 10,000 different tenements assessed to the land tax; some parishes in the north of England are as large as the county of Rutland, *Rep. ii. 26*.

*Park, John James.* Communication from John James Park, showing the difficulties to be encountered in establishing a registry; defects in the Middlesex registry; effect of foreign registries, *Rep. ii. App. 58–60*—Letter from J. J. Park on the Genevese registry, *ib. 519*.

*Parkes, Joseph.* Communication from Joseph Parkes, of Birmingham, with statutes of New York as to registration, *Rep. ii. App. 476–480*.

*Parochial Index.* Great advantages that would result from a parochial index attached to a general register, *Rep. ii. App. Lake 235*.

*Parochial*



**Parochial Registration.** Copies of parochial registration should be sent up to the Register-office, *Rep. ii. App. Walters 7*—Pedigree should be authenticated as far as practicable, by extracts from parish registers, or by affidavit, under inrolment, according to the proposed plan, *Lowndes 18*—Suggestions for a parochial registry or district registry, containing a certain number of parishes, *Hawkins 98*—If a metropolitan registry be not established it must be done by parishes and extra parochial places, which will be next to impossible, *Wimburn 126*.

**Parol Agreement.** Objection, that if a small estate is paid for, and possession taken without writing, or on a mere agreement, that the want of a conveyance on the register should bring back the heir of the vendor, *Rep. ii. App. Nash 108*.

**Partial Interests.** There are cases of the creation of partial interests in which the deeds are retained by the party entitled to the possession of the land, *Rep. ii. 4*.

**Partial Registration.** Suggestions for a partial establishment of the register, to try the working of it, *Rep. ii. App. Walters 51*—Objection to confining registry to particular districts, whereby, in many places, only part of a street, and in some only part of a man's premises, are subject to registry, *Meymott 105*.

**Parties.** Provision for registering deeds consisting of several parties, *Rep. ii. 32*.

#### PEDIGREES:

##### 1. Generally.

##### 2. Queries of the Commissioners on the subject, with Answers thereto.

##### 1. Generally:

Suggestions with regard to a register of evidence of pedigree, *Rep. ii. 64*, and *App. Walters 7*; *Lowndes 18*; *Smyth 114*—After the lapse of twenty years from inrolment, the pedigree and vouchers, on claiming by descent, should be *prima facie* evidence of the truth of the facts recorded therein, and after three years should be evidence against the party inrolling, and claimants under him, *Rep. ii. App. Lowndes 18, 19*—After the expiration of thirty years from inrolment of pedigree as a family memorial, the pedigree and vouchers should be *prima facie* evidence of the truth of the facts recorded, *ib. 19*.

Pedigrees and other documents needful to the elucidation of title should be allowed to be registered, *Rep. ii. App. White 57*; *Bacon 65*—Pedigrees should be registered with evidence in support of them, *Coles 92*—Pedigrees should be registered separately; there might also be a book for entering the pedigrees of persons succeeding by inheritance, *Woodroffe 129*—Nature of the evidence by which pedigrees should be supported to entitle them to register, *ib. 131*.

##### 2. Queries of the Commissioners on the subject, with Answers thereto:

Questions: whether in any case pedigrees should be registered? *Rep. ii. App. 141*—Written answers, 147-295; *viva voce* answers, 307-438—Whether, where a conveyance from a person entitled by descent is to be registered, it should be made necessary to register his pedigree? *Rep. ii. App. 142*—Written answers, 147-295; *viva voce* answers, 321-438—Whether where a person, claiming under a limitation, is not named in the deed or will, he should be required to register a statement showing how he answers the description? *Rep. ii. App. 142*—Written answers, 148-292; *viva voce* answers, 321-438.

**Pemberton, John.** Communication from John Pemberton, of Sherburn-hall, Durham, containing suggestions on the subject of registration, particularly the formation of registrars' courts, *Rep. ii. App. 38-40*—Also communication containing answers to circular, against a metropolitan registry; in favour of a district register; and an open register; propositions as to the mode of registry; documents to be registered; registry of births, &c., *ib. 153-157*.

**Penalty on Witnesses.** Penalty on witnesses for refusal to appear or to testify, (New York St., sec. 14,) *Rep. ii. App. 478*.

**Period of Titles.** Suppression, loss, or non-production of deeds may have taken place during the successive ownerships through which the property has passed during the whole period necessary for making a title, *Rep. ii. 5*.

**Periods of Inrolment.** Reasons why the periods of inrolment and registration should be shortened, *Rep. ii. App. Balfour 29*—As regards England and Wales, all instruments should be recorded within a certain period, not exceeding sixty days from their dates; and wills within a similar period of the testator's death, *ib. 31*—Deeds or wills, executed either in Ireland or Scotland, should be recorded within six months, and if beyond seas within twelve months of the respective dates fixed for registry, *ib.*—In Jamaica, as regards purchasers for valuable consideration, the deed must be registered within a limited time, or the party claiming under it may be postponed to a subsequent purchaser who shall have registered, *Burge 42*.



- Perjury.** Regulations for imposing the penalty of perjury on those falsely swearing affidavits for registry, *Rep. ii. App. Lowndes 22.*
- Personal Acknowledgment.** Objection to personal acknowledgment by grantors, *Rep. ii. App. Balfour 29.*
- Personal Estate.** The hundred register might be extended by permitting or enjoining the registry of deeds relating to personal estate only of a family nature, settlements, &c., *Rep. ii. App. Lowndes 20.*
- Personal Remedies.** Nature of personal remedies that should be given against agents and against a party defeating his own grant, and against his heir or volunteer under him, *Rep. ii. 41.*
- Personal Security.** If it could be ascertained that an estate was unincumbered, the owner might be able, without difficulty, to obtain an immediate loan upon his personal security, *Rep. ii. 22.*
- Phillpotts, John.** Answer to circular by John Phillpotts, of Gloucester, showing the advantages that would result from a general register; an open register is most desirable; it should be in London, and should be at length, *Rep. ii. App. 157-159.*
- Plan for a General Register.** Outline of a plan for a general register, circulated by the commissioners, *Rep. ii. App. 134-137*—Objections to the commissioners' outline, *Rep. ii. App. Dixon 181; Alington 201; Carrett 217; Wulton 274*—Plan proposed, *Alington 201*—Observations upon the commissioners' outline, showing its advantages and defects, *Fonnereau 223*—Approval of the commissioners' outline, *Ker 279; Chance 281*—In the only way in which the commissioners' outline would be expedient it is impracticable, and confined to the extent to which it is practicable it is not expedient, *Barnes 399*—Remarks upon the outline of a plan for a general register, *Balfour 433.*
- Pleading of a Purchase.** By the records, much, if not the whole pleadings of a purchase might be superseded, particularly as regards the vendor's title and point of notice, *Rep. ii. App. Balfour 33.*
- Portions of Pedigree.** Reasons for allowing portions of pedigree to be inrolled, and in what manner, *Rep. ii. App. Lowndes 19.*
- Possession of Land.** The presumption of title from the possession of land is out of the question, *Rep. ii. 4.*
- Possession of Title Deeds.** The possession of title-deeds is never conclusive evidence of title, and in many cases such possession cannot be had, *Rep. ii. 4*—The purchaser or mortgagee of a reversion, cannot require the deeds to be delivered to him until after the death of the tenant for life, *Rep. ii. App. Bacon 62*—Great objection to owners not having possession of their own deeds, *Alington 76, 77.*
- Possession and Enjoyment.** The register should afford the record of a title with reference to possession and right of enjoyment, affording evidence of the title of the ostensible owner, *Rep. ii. App. Walters 8*—Records will strengthen the rule of law, whereby a right is presumed from possession for length of time, *Balfour 33*—The giving up possession is almost always evidence of the moral title of the person to whom it is given, *Nash 108*—When access to title is in the power of every individual, long possession will not be necessary to constitute an unexceptionable title, except in cases of incapacity, *Morgan 106.*
- Postage.** Postage to be paid by the office, and the average amount added to the charges of registration, *Rep. ii. 78.*
- Post-Office.** The Post-office might be made the means of communication with the central Register-office, which would diminish costs and delay, *Rep. ii. 27*—The Post-office might be empowered to give facilities for the transmission of deeds to London, *Rep. ii. App. Walters 50.*
- Powell on Mortgages.** Reference to this work on the subject of suppression of deeds, *Rep. ii. 6, note.*
- Powers.** Instruments taking effect under the exercise of powers should be registered, *Rep. ii. App. Measure 71.*
- Powers of Attorney.** Not to be included in the term "conveyance," but they may be proved and recorded, (New York Stat. sec. 39,) *Rep. ii. App. 479.*
- Prerogative Office (Doctors' Commons).** Advantages arising from the facility of search for wills in this office, *Rep. ii. App. Longley 45*—Censure on the Prerogative-office in consequence of the worn state of its calendars, *Park 59*—If the alphabets of wills in the Prerogative-office were kept dictionary-wise it would cause a great saving of time, *Lindsay 103.*

*Prescription.*

**Prescription.** No interest, either at law or equity, should be carved out of the fee simple to continue for a longer period than three lives, or 100 years, except in cases of easements, *Rep. ii. App. Gilbert* 143.

**Preston on Abstracts.** Mr. Preston, in the first edition of his work, (vol. iii. p. 338,) mentions the inconvenience of identifying judgment debtors, but proposes the docketing judgments anew, upon the old plan, without insisting on a better description of the debtor, *Rep. ii. App. Lowndes* 22—Reference to Mr. Preston's work on Abstracts, (vol. iii. p. 310,) on the oppressive nature of Crown debts, *ib.* 24—Proposition for the purpose of remedying a frequent objection to titles mentioned in Preston on Abstracts, (vol. i. p. 153; vol. ii. p. 10; vol. iii. p. 8,) as to constructive notice of earlier deeds rendering titles unsafe, *ib.*

**Presumption, Doctrine of.** Doctrine of presumption explained, *Rep. ii. 12*—Registration will prevent the benefits arising from the doctrine of presumption, which the courts seem inclined to favour, *Rep. ii. App. Bishop* 85—Juries should still be allowed to presume surrenders of terms and discharges of legacies when they think fit, *Hawkins* 98.

**Principal Keepers.** Proposition that a principal keeper be named under full responsibility to superintend the establishment, with power to name his substitutes, *Rep. ii. App. Balfour* 32.

**Principal Registrars.** In the Middlesex register three-fourths of the gross receipts are divided amongst the four head registrars, *Rep. ii. 77*.

**Principals.** Manner in which an omission to register may occur through the principal party; who in strictness can require no protection against his own act, *Rep. ii. 40*.

**Printed Copies of Abstracts.** Suggestion for the sale of printed copies of abstracts of deeds after twenty years from the execution or registry of them, *Rep. ii. App. Smyth* 113, 114.

**Printing.** Suggestions for printing abstracts of deeds and depositing copies of them with clerks of peace, *Rep. ii. App. Smyth* 113—Suggestion that all office books and records of all descriptions should be printed instead of being in MS., *Palgrave* 198.

**Prior Estates and Incumbrances.** Benefits will arise from a registry, from attempts at fraud by concealing prior estates and incumbrances being prevented or materially checked, *Rep. ii. 63*—The danger as to prior incumbrances would be removed by a register, *Rep. ii. App. Meymott* 105.

#### PRIORITY OF REGISTRATION:

##### 1. Generally.

##### 2. Questions of the Commissioners on the Subject, with Answers thereto.

##### 1. Generally:

The objection to prior registration of a subsequent document is answered by the proposition of a caveat, *Rep. ii. 24*—Suggestions as to the effect to be given to registration with respect to priorities, *ib.* 35—Priority of registration is adopted in both Ireland and Scotland, *Rep. ii. App. Balfour* 28—Except in cases of fraud, recorded instruments should be preferred according to priority of registration, *ib.* 31—From what circumstances questions of priority usually arise in equity, *Bell* 36—All instruments should have priority of effect according to priority of registry, *Longley* 45; *Ashew* 48; *Walters* 68; *Measure* 70; *Atkinson* 82; *Coles* 94; *Hodgson* 99; *Wilkins* 121; *Wilkinson* 122—Incumbrances should take effect in priority according to the date of registration, *Sherard* 112; *White* 120.

Objection to the doctrine of priority of registration, *Rep. ii. App. Hayes* 55—Giving priority according to registry will not compel the registration of many instruments, *Alington* 76—The operation of prior deeds should not be destroyed, but only suspended where circumstances will admit of both operating at the same time, *Leach* 102.

##### 2. Questions of the Commissioners on the Subject, with Answers thereto:

Questions: whether all estates and incumbrances should not prevail according to their priority on the register, notwithstanding notice of unregistered instruments? *Rep. ii. App. 139*—Written answers 146-294; *viva voce* answers, 301-434—Whether any exception should be introduced? *Rep. ii. App. 139*—Written answers, 146-286; *viva voce* answers, 301-434—Whether any difference should be made between actual and constructive notice, *Rep. ii. App. 139*—Written answers, 146-294; *viva voce* answers, 301-434—Whether, where registration had been prevented by fraud, equity might not relieve? *Rep. ii. App. 139*—Written answers, 146-286; *viva voce* answers, 201-426—Whether a conveyance duly registered from a party entitled under a deed which has not been registered, should be preferred to a subsequent registered conveyance from the original owner? *Rep. ii. App. 139*—Written answers, 146-286; *viva voce* answers, 301-426.

**PRIORITY OF REGISTRATION**—continued.**2. Questions of the Commissioners on the Subject, with Answers thereto**—continued.

Questions: whether a voluntary conveyance registered should prevail against an instrument for valuable consideration not registered, *Rep. ii. App. 139*—Written answers, 146–286; *vivâ voce* answers, 301–426—Whether the subsequent registration of the instrument for valuable consideration should give it priority over the voluntary conveyance? *Rep. ii. App. 139*—Written answers, 146–286; *vivâ voce* answers, 301–428—Whether the register should be notice in cases where in courts of equity notice may still be material? *Rep. ii. App. 140*—Written answers, 146–286; *vivâ voce* answers, 301–428—Whether instruments *inter vivos* should take effect in all cases according to priority of registry, or whether a time should be limited after execution within which they might take effect according to priority of execution, *Rep. ii. App. 140*—Written answers, 147–294; *vivâ voce* answers, 301–428.

**Private Acts of Parliament.** Private Acts relating to estates, inclosures, and such other Acts as form parts of titles, might be registered by leaving a printed copy at the office, *Rep. ii. 32*.

**Private Affairs.** The objection that a register may expose the affairs of private individuals answered, *Rep. ii. App. Adlington 72*.

**Probates and Administrations.** Difficulties which occur in consequence of the wills or administrations necessary to trace the title to a term; particularly as regards the jurisdiction of the courts for granting probates, *Rep. ii. 10*—After the probate is granted on wills of personal estate, the officer of the Ecclesiastical Court should be compelled to transmit to the Register-office any will affecting real estate at the request of any person interested, *ib. 32*—Inconvenience of the present law regarding probates and administrations; provincial probates should, like those issuing from the Prerogative Courts, be only voidable, and not absolutely void, *Rep. ii. App. Briggs 5, 6*—All questions which arise as to the jurisdiction to grant probates and administrations will be avoided by witness's plan, with regard to terms, after the establishment of a registry, *Walters 8, note \**—The obligation upon next of kin to administer before they can demand an intestate's effects is not inconvenient, and if executors were placed on a similar footing as to probates it would be advantageous, *Lowndes 18*—Where wills have been proved in the Ecclesiastical Court the probates should be left, and returned with a certificate of registry and reference thereon, *Adlington 75*.

**Proclamations of a Fine.** The register should be a substitute for the proclamations of a fine, which give the benefit of non-claim, *Rep. ii. App. Walters 8*.

**Production of Deeds.** Difficulty of obtaining the production of deeds, *Rep. ii. 15*—Where there is no covenant, or it becomes ineffectual, it is doubtful whether production of the deeds can be enforced, and the title is unmarketable, *ib. 16*—Benefit will be derived by the register from titles ceasing to be unmarketable on account of the owners not being able to produce or secure the future production of the title-deeds, *ib. 63*—Benefit will arise from a register from there being no expense in procuring the production of documents, *ib.*—There should be some mode of giving public legal notice for the production of deeds, *Rep. ii. App. Gilbert 163*.

**Professional Agents.** Fear of the advantages of a registry being upset by the inadvertence of professional agents, *Rep. ii. App. Park 58*.

**Professional Men.** Professional men keep no record of transactions as to the suppression of deeds, or if they do, are unwilling to bring them forward, but most men of considerable standing have met with instances, *Rep. ii. 6*—Professional men may be expected to study the registry as much as the present intricate law of real property, *ib. 60*—Counsel, solicitors, and attornies should be identified together for the sake of professional unanimity, and the former should be subject to the same rules and liabilities as the latter, *Rep. ii. App. White 120*.

**Profits.** The profits from searches and certified copies of the symbols would be small at the commencement of the register, but would increase, *Rep. ii. 78*.

**Promissory Notes.** If charges on an estate be registered, so ought promissory notes to be, as regards the question of false credit, *Rep. ii. App. Nash 108*.

**Proof of Deeds, Documents, &c.** Concurrence in the recommendation contained in the second Common Law Report for dispensing with the formal proof of documents, *Rep. ii. 43*—Complaints are not made as to the proof of wills, which usually disclose much more minute family arrangements than deeds, *Rep. ii. App. Bacon 62, 63*—In what cases strict proof of deeds shall be required in evidence, *Keightley 100*—In what manner the proof of deeds will be simplified under a registry, *Watson 116*.

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**Proof of Execution.** In Jamaica, before the deed is admitted to be registered, it must have been proved by one or more witnesses, or acknowledged by the parties executing it, before some public functionary; importance of this regulation, *Rep. ii. App. Burge* 41—Proof of execution of deeds should be made before the registrar or his deputy, at the office, or before the provincial deputy registrar, *Bacon* 64—Manner in which proof of execution of deeds should be made, *Bacon* 64; *Measure* 70—Witnesses not able to attend before the registrar, should make affidavit of execution of deeds before a Master, ordinary or extraordinary, *Keightley* 100—The proof of execution of memorial might be made before a commissioner for taking affidavits, in one of the King's courts at Westminster, *Seymour* 111—The proof of execution of deeds should be by affidavit, and not by personal attendance of witnesses, *Weatherby* 118—There is no sufficient reason for requiring verification of deeds previous to enrolment; the risk of detection would be so great as to render fraud or forgery improbable, *Wilkins* 121—Officers who may take proof of deeds in the state of New York and other states of America, *Rep. ii. App.* 477.

**Proprietors of Land.** Persons whose names are borne on the register should be absolute proprietors for all marketable purposes, *Rep. ii. App. Fonnereau* 11.

**Protection and Security.** One of the objects of the register should be the protection and security of all persons having landed property, *Rep. ii. App. Walters* 8—Protection to individuals would be afforded by a register, *Atkinson* 81.

**Provincial Books.** The principal keeper should supply the local keepers with similar books to his own, which when filled up ought to be immediately returned to Westminster, the keepers retaining a transcript of the minute book, and receiving copies of the general minute book, *Rep. ii. App. Balfour* 32.

**Provincial Offices.** Provincial offices should comprehend a district of two or more counties; rules under which they ought to be conducted, *Rep. ii. App. Balfour* 32.

**Provincial Registry.** In the event of a metropolitan registry being impracticable, one registry in the province of Canterbury, and another in that of York recommended, *Rep. ii. App. Robinson* 111.

**Provisional Registration.** Provisional registration suggested where there are many parties to a deed, *Rep. ii.* 32.

Question circulated by the commissioners, whether for the purpose of registering instruments before the execution of them by all parties intended to execute, the provisional registration should be permitted of a copy examined at the office with the original, and a certificate of such registration thereupon indorsed on the deed; and whether the execution of subsequent parties might not be indorsed upon such copy, and certified on the deed? *Rep. ii. App.* 140—Written answers, 147-287; *viva voce* answers, 302-434.

**Prussia.** Communication on the Prussian register, *Rep. ii. App. Cooper* 459-461.

**Public Funds.** Evils arising from the public funds being only transferable in London; supposition that similar evils might result from a metropolitan register, *Rep. ii. App. Pemberton* 153.

**Publication.** Publication and preservation of deeds are the purposes of registers, *Rep. ii. App. Balfour* 27.

**Punishment.** Punishment for recording deeds, &c. without being proved, in New York, *Rep. ii. App.* 479—Punishment of judges' clerks, &c. for malfeasance, in New York, *ib.*

**Purchasers and Mortgagees.** Advantages of caveats to purchasers and mortgagees, *Rep. ii.* 29—Special provision should be made, that a purchaser after registering his deed should have the same grounds of relief at law and in equity against a subsequent purchaser who has acquired priority by registration, as the original seller would have if the first conveyance had not been made, *ib.* 43—After the establishment of the registry there must be a concurrence of many circumstances for a case to arise in which a purchaser can be damnified, *ib.* 61—Purchasers are very seldom damnified by fraud or mistake under the present system, *ib.*—A general registry should have in view the greater protection of purchasers and others dealing for an interest in property, *Rep. ii. App. Hayes* 55.

Advantage of the register in the North Riding of Yorkshire to purchasers and mortgagees, *Rep. ii. App. Atkinson* 79, 80—A registry is calculated to be of great utility to *bonâ fide* purchasers and mortgagees, *Leach* 101—Under registration, purchasers would have knowledge of charges on estates intended to be purchased, *Morgan* 107—Effect of a registry where a purchaser may take a conveyance in the name of a friend, *Nash* 108—Purchasers have and will have, by proposed alterations in the law, sufficient security without depending on a registry of deeds, *Smith and Wilkinson* 113—The proposed registry will give purchasers and mortgagees effectual safety in the investment of their money, *Woodroffe* 131—Term purchaser in New York defined, *Rep. ii. App.* 479.

*Purchases, Scotland.* System of registration as regards purchases in Scotland, *Rep. ii. App. 507.*

*Pybus, John.* Answers of John Pybus, of Newcastle-upon-Tyne (to the circular of the commissioners), in favour of an open register; of one independent office in each county; of a memorial only being required, but with power to inrol the deed, *Rep. ii. App. 248-251.*

## R.

*Radford, Henry.* Communication from Henry Radford, of Atherstone, approving of the commissioners' outline, suggesting a county register, and giving opinion (in answer to circular) in favour of an open register; of one general register-office for wills in the metropolis; and of registration by memorial, *Rep. ii. App. 251-254.*

*Real Actions.* Writs of every description which may be brought for the recovery of land should be abolished, and one simple remedy for the recovery of the interest substituted, *Rep. ii. App. Walters 8, note \*.*

*Real Property.* The great difficulties which occur in selling estates and obtaining money on real security, the time which usually elapses before the completion of such transactions, and the harassing expenses and disappointments, are by many persons considered the greatest evils belonging to the law of real property, *Rep. ii. 17*—Many ingenious plans for removing the evils attendant upon the transfer of real property have been submitted to the commissioners; but they would either not be effectual, or would be liable to insuperable objections, *ib. 18*—The improvements suggested by the commissioners on the law of real property, and as regards incumbrances, if adopted, will supersede the proposed benefits of registration, *Rep. ii. App. Weatherby 117.*

*Receipt.* Nature of receipt to be given on leaving deeds for registry, and to be delivered up on receiving back the registered deeds, *Rep. ii. App. Woodroffe 128, 129, 130.*

*Receiving Parties.* Reasons for recommending the indexing of the names of receiving parties, *Rep. ii. App. Woodroffe 128.*

*Recitals.* As the registry advances in years, recitals of registered deeds will not be thought necessary, which will shorten deeds, *Rep. ii. App. Walters 8*—Objection to the omission of all recitals; manner in which they might be abridged, *Lowndes 16*—Proposition, that constructive notice of deeds by recital be taken away, except in certain cases where recitals are to be evidence, *ib. 24.*

*Recognizances.* Recognizances and bonds to the Crown and quietuses should be recorded in separate books, *Rep. ii. App. Woodroffe 129.*

*Re-conveyances and Surrenders.* Questions respecting the presumption of re-conveyances and surrenders will be prevented by some alteration of the statutes of limitation, *Rep. ii. App. Wilson 47*—Mortgagees' interests are seldom re-conveyed on the paying off a mortgage; evils that would result, as regards notice, from a mortgage-deed being registered, the deed itself being destroyed, and there being no evidence of payment, *Nash 109.*

*Records.* The register should have for one of its objects the establishing a secure place of record for evidences of title, *Rep. ii. App. Walters 8*—The records in Scotland bestow a much superior security than can be obtained in England on real property, which enhances the value of land, and limits the interest on mortgages within a reasonable standard, *Balfour 34*—In New York the records of conveyance may be read in evidence with like force and effect as the original conveyance, *Rep. ii. App. 478*—Effect of recording and deposit in New York, *ib. 479.*

*Recoveries.* The records will prove that the freehold was vested in the tenant to the writ of entry, within the term of suffering the recovery, *Rep. ii. App. Balfour 33.*

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*Redemption of Land Tax.* Conveyances on sales for redemption of land-tax must be enrolled, *Rep. ii. Rep. Adlington 74.*

*References.* Necessity for references being made when deeds are transferred from one class to another, *Rep. ii. 45*—Provision necessary for obtaining a reference to the class, *ib. 51*—A place of reference for information as to the nature of the title, or of any instrument relating to it, should be one of the objects of the register, *Rep. ii. App. Walters 8*—A reference office should be opened in Westminster, to deposit all the minute books, and these might form the groundwork of an index to any particular record, containing the names of persons and places arranged in alphabetical order, *Balfour 32.*

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**Register Counties.** The register counties afford an example that a general registry would be a great public benefit; sales and loans are effected with greater facility in the register counties than elsewhere, *Rep. ii. App. Robinson 111*—Property is not considered more valuable for being situated in a register county, *Stevens 261*.

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**Registered Conveyance.** A registered conveyance for value from voluntary grantee or assignee should prevail against an unregistered deed, *Rep. ii. 35*.

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**Registers.** Registers of wills are of a very imperfect description, they lie in various places, and are established on no uniform system, *Rep. ii. 7*—In some countries inconvenience is acknowledged to arise from the registration not embracing all interests in real property, *ib. 19*—In several countries, registers have been enlarged and extended, and there is no instance of a register being discontinued, *ib.*—Since the reign of Hen. 8, various unsuccessful attempts have been made by Parliament either to establish registers, or secure their effects, *Rep. ii. App. Balfour 28*.

**Registrar's Court.** Suggestion for the formation of a registrar's court in each county; its proposed duties and objects, *Rep. ii. App. Pemberton 39, 40*.

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**Registration of Deeds, Documents, &c.** In some cases a species of registry does exist; documents of minor importance are required to be registered, while for the most important no provision is made, *Rep. ii. 7*—Delay must arise from the registration of deeds, *ib. 20*—How this will be prevented by a general registrar, *ib. 21*—An enactment making registration essential to the operation of a deed, could not be made at the introduction of a system of general registration, *ib. 35*—Provisions that should be made for authorizing persons to register deeds; or the present mode may be adopted under the new system, *Rep. ii. App. Walters 9*—Manner in which the registrar should proceed to register deeds, the execution of which shall be duly proved, *Bacon 64*—No deed, will, or other instrument, nor pedigrees or other transactions, should derive any additional efficacy from the mere fact of registration, *ib. 65*—Process of registration through the several stages considered, *Woodrooffe 129*—Proceedings to be taken, and receipt to be given on leaving deeds for registry, *ib.*

**Registry Acts.** The inefficiency of the Registry Acts has arisen from the controlling refinements of equity, *Rep. ii. App. Balfour 27*—Reasons through which the statutes 27 Hen. 8, c. 16, and 5 Eliz. c. 26, proved inoperative, *ib. 28*—List of the various Registry Acts, and purposes for which they were passed, *ib. 28, 29*.

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1. Generally.
2. Queries of the Commissioners on the subject.

## 1. Generally:

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**Releases and Discharges.** Releases and discharges, as well as contracts for release and discharge of lands from any charges affecting them, should be registered, *Rep. ii. App. Burge 43*—Use and objects of these deeds; effect ascribed to them, *Bacon 61*—The registry of any receipt, discharge, or other instrument releasing land from any charge, should be incontrovertible evidence in favour of a purchaser, *Hawkins 98*.

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**Repertory.** The existing registers are not effectual for the purpose of a repertory; the proposed plan will effect this object, *Rep.* ii. 57.

**Reports of Cases.** Cases as to suppression of deeds which come into courts of justice, do not appear in the printed reports, unless they furnish occasion to lay down some new principle of law, *Rep.* ii. 6.

**Residences and Additions.** Suggestions have been made for inserting the residences and additions of parties, and some particulars of the property; objections thereto, *Rep.* ii. 25.

**Resulting Trusts.** Effect of registry on the equitable doctrine of resulting trusts, *Rep.* ii. *App.* *Watson* 116.

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**Reversions.** Reversionary interests would become more valuable and marketable by the establishment of a general register, *Rep.* ii. *App.* *Seymour* 111—Grants of reversions might be registered for the double purpose of preventing them, and when made, of protecting the grantee, *Sweet* 114—Registration would be advantageous in cases of grants of reversions, *Watson* 115.

**Revocation of Appointment.** Instances may occur in which revocations of former appointments may be suppressed, and the revoked appointments produced as giving a title, *Rep.* ii. 5.

**Rex v. Lambe.** Reference to this case, (1 Macl. 402,) in which it was left undecided whether a recognizance entered into by the committee of a lunatic, merely to account for the rents, and in which the Crown had no interest, was not within the statute of Hen. 8; alarming consequences to be apprehended should this doctrine be established, *Rep.* ii. *App.* *Briggs* 5.

**Rex v. Smith.** Danger arising from the doctrine held by the Court of Exchequer in this case (*Sug. Vend. App.*), that a satisfied term assigned to attend the inheritance will not protect a purchaser against a Crown debt due by the vendor, *Rep.* ii. *App.* *Briggs* 5.

**Richardson, John.** Communication from John Richardson of Fludyer-street, giving a history of the Scotch registers, and the Acts on which they are founded; and in answers to the commissioners' circular, states his opinion to be in favour of an open register in the metropolis, but connected with a county register; deeds should be registered at length, *Rep.* ii. *App.* 254-257.

**Richmond, Christopher.** Examination of C. Richmond on the circular issued by the commissioners, in which he gives preference to an open register in the metropolis, and at full length, *Rep.* ii. *App.* 331-336.

**Ridding, Thomas.** Communication from Thomas Ridding, of Southampton, on the advantages of a registry if it did not enhance the expense of conveyancing, *Rep.* ii. *App.* 110.

**Rigge, John.** Answers of John Rigge to questions circulated by the commissioners on the subject of the Middlesex registry, *Rep.* ii. *App.* 485.

**Right to Registration.** The right to registration should belong to the party for whose behoof the instrument is granted, by means of a special clause of attorney, *Rep.* ii. *App.* *Balfour* 31.

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**Robinson, Hine & Robinson, Messrs.** Communication from Messrs. Robinson, Hine & Robinson, of Charterhouse-square, in favour of a metropolitan registry, or in its absence, registries in the provinces of Canterbury and York, *Rep.* ii. *App.* 111.

**Robinson, William.** Communication for William Robinson, attorney, of Charterhouse-square, showing the causes of delay, and expense in civil suits; opinion that the length of declarations should be abridged; special pleading abolished; mode of proceeding suggested against absent defendants; parties using initials instead of names proposed to be sued on such initials; the plea side of the Court of Exchequer should be opened to all attorneys; daily list of causes for trial should be confined to either special jury causes or common jury causes only, *Rep.* i. *App.* 610, 611.



*Roe, J. H.* Answers to the circular of the commissioners, by J. H. Roe, in favour of a general registry in London, combined with a county registration; reference should be made to a general plan or survey, where feasible; it should be an open registry, *Rep. ii. App. 150.*

*Rolfe, Robert Monsey.* Examination of R. M. Rolfe on the circular of the commissioners, preferring an open register, and one office, *Rep. ii. App. 336-340.*

*Rolls Court.* The register should be placed under the peculiar and uncontrollable direction of the Rolls Court, to which extensive powers should be given, *Rep. ii. App. Walters 51.*

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*Satisfaction of Judgments.* Satisfaction of judgments should be entered on the register, *Rep. ii. App. Adlington 75*—Amendment required in the Act of the East Riding of Yorkshire as to the proof on entry of a satisfied judgment, *Blanchard 86.*

*Satisfaction of Mortgages.* The practice which prevails in Jamaica of entering satisfaction on the margin of the registered mortgage, and of allowing such entry to have the effect of extinguishing the mortgage, might be introduced with advantage, *Rep. ii. App. Burge 43*—Registered certificates of the discharge of mortgages should operate to make void the estates created by them, *Wilson 47.*

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*Schruchan Decision.* Necessity for considering well the Schruchan decision, and the doctrine of record therein established, *Rep. ii. App. Sir James Graham 36.*

*Scotch and Irish Registries.* Manner in which the searches are made in the Scotch and Irish registries; there are more memorials registered in one year in Middlesex than in all Scotland and Ireland taken together, *Rep. ii. App. Wimburn 125*—Report made to the commissioners as to the registers in Scotland, *Rep. ii. App. 507*—Table showing the number of instruments recorded in the registries of seisins, both general and particular, for each county in Scotland, for the years 1781, 1790, 1800, 1810 and 1820, *ib. 512, 513*—Table of fees in his Majesty's General Register-house at Edinburgh, as regulated by the commissioners appointed to that effect by Act of Parliament, 3 Geo. 4, c. 62, *ib. 514*—Particulars showing the principle of the Scotch registers; mode and effect of registration, *ib. 515-518.*

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*Scotland.* Inquiry into the Scotch system of registration, *Rep. ii. 4*—A registry has existed from a very early period in Scotland, *ib. 19*—In Scotland registers are considered productive of essential benefit, *ib.*—The Register-office in Scotland is yet without an index; indexes of names are now in progress, *ib. 24*—In Scotland no authentication is required for the registration of an instrument, but various formalities are required for its validity, *ib. 33*—A rigorous adherence to the strict law of registration has prevailed in Scotland, without any inconvenience, *ib. 39*.

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#### SEARCHES :

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2. *Inconveniences arising from the present System of Searches; Expense attending them.*
3. *Probable Advantages which would result from the Establishment of a General Register, as regards Searches.*
4. *Searches for Judgments.*
5. *Questions circulated by the Commissioners on the subject of Searches, with Answers thereto.*

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##### 2. *Inconveniences arising from the present System of Searches; Expense attending them :*

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Detail of the mode of making searches in the Middlesex registry, showing the difficulties and great chances of incorrectness, *Rep. ii. App. Park 59*—Under a registry there would be considerable difficulty in making searches, *Keightley 100*—Difficulty of searching the register for property in Middlesex, *Smith and Bayley 112*—Risks as to accuracy of search that will be caused by a general registry, *Watson 116*.

##### 3. *Probable Advantages which would result from the Establishment of a General Register, as regards Searches :*

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4. *Searches for Judgments:*

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*Secret Conveyances.* A registry will afford security against the mischiefs arising from secret and fraudulent conveyances and deeds, *Rep. ii. App. Atkinson 81*—Object of a registry to prevent fraud by secret conveyances, *Carr 87*—A register will prevent secret and fraudulent conveyances, mortgages, and settlements, *Messiter 104*—Secret conveyances would be rendered nugatory by the establishment of a general registry, *Seymour 111*—A general registration would allow an easy discovery of conveyances and incumbrances affecting any estate, *Sherard 112*.

*Secret Deeds.* The commission of frauds by means of secret deeds, and the conflicting claims to which such deeds give rise, would be prevented by the registry, *Rep. ii. App. Wilson 47*.

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*Security of Titles.* One effect of a registry would be the rendering titles more secure and perfect, *Rep. ii. App. Bacon 66*—The object of a registry is to render the enjoyment of property more secure, *Measure 71*—The expenses attendant upon registration, the subsequent searches, and new questions that would be introduced on the investigation and litigation of titles, would overbalance the advantages of additional security afforded to subsequent purchasers, *Bramwell 86*—Registration affords security to subsequent purchasers, *ib. 87*—Greater confidence and security to purchases and mortgages would be the result of registration, *Carr 88*—Titles will be rendered more secure by a registry, *Lindsay 103*—The expediency of a register is founded on the additional security it will afford in the event of the loss of deeds, and against frauds, *Messiter 104*—The advantageous effects of a registry would be shown in the greater security of mortgagees and purchasers, *bonâ fide* creditors, and wives and children under marriage settlements, *ib. 105*—Titles would be rendered more secure by the establishment of a registry, *Seymour 111*—Security to purchasers and mortgagees is the main advantage to be derived from a general register, *Woodrooffe 127*.

*Senior, Nassau William.* Examination of N. W. Senior before the commission on their circular on registration, in which he prefers an open register; one general office, and registry at length, *Rep. ii. App. 369-372*.

*Settlement.* Manner in which settlements may be kept back to impose on a purchaser or lender of money, *Rep. ii. 5*—The disclosure of settlements would not be attended with any important consequences; children generally acquire a knowledge of their expectancies, *ib. 23*—Number of *ad valorem* stamps on settlements in the year 1825, *ib. 70*—Legal settlements should not be allowed to be defeated or become the cause of fraud by their suppression, *Rep. ii. App. Hayes 55*—The registration of marriage settlements would be injurious to families, *Atkinson 79*—It is proposed to register, in a separate book, settlements including transfers of any interests under settlements, *Woodrooffe 129*.

*Seventh District.* The seventh registration district is proposed to consist of the counties of Lincoln, Nottingham, Derby, Leicester, Rutland, and Stafford; number of properties, according to the land-tax assessment of 1798; population 1821; area in square miles; number of parishes, *Rep. ii. 74*.

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*Seymour & Kell, Messrs.* Communication from Messrs. Seymour & Kell, of Newcastle on the advantages of a general registry, *Rep. ii. App. 111.*

*Shares in Public Companies.* Need not be registered, as under the provisions of Local Acts of Parliament, they appear on the books of the companies, *Rep. ii. 28*—A register of shares and charges transferable in books of public companies would tend to prevent fraud, *ib. 64*—Shares being registered does not produce deterioration in their value, *Rep. ii. App. Coles 90, 91.*

*Sherard, Robert.* Communication from R. Sherard, of Oundle, on the mode and effects of registration, *Rep. ii. App. 112.*

*Sheriffs' Offices.* In consequence of not being able to search whether writs have been lodged in sheriffs' offices on judgments, searches must be made for judgments on purchase of leasehold as well as on freehold property, *Rep. ii. App. Stevens 261.*

*Ship Registry Act.* The delay incident to the necessity of recording transfer of ships at the port to which the vessel belonged, as required by Act 4 Geo. 4, put an end to transfers in England of ships owned in the colonies, *Rep. ii. App. Watson 116.*

*Shipping.* Courts of equity have not interfered with the Acts for the registry of shipping on the ground of notice, *Rep. ii. 39.*

*Shortening Deeds.* Recommendations as to shortening deeds, *Rep. ii. 31*—Benefits will arise from a register, by deeds being shortened, *ib. 63*—Proposition for shortening deeds by paying draughtsmen in an inverse ratio according to the length, *Rep. ii. App. Lowndes 16*—Other respects in which, besides in the deeds themselves, brevity would be advantageous, *ib.*

*Sidebottom, Alexander Radcliffe.* Examination of A. R. Sidebottom on the circular of the Commissioners; he prefers an open register, situate in the metropolis, the documents being registered at length, *Rep. ii. App. 321-328.*

*Simplification of Titles.* Benefit will arise from a registry, by titles being simplified; there will be only one title to an estate instead of many, *Rep. ii. 63.*

*Simpkinson, John A. F.* Examination of J. A. F. Simpson on the circular of the commissioners, in which he advocates an open register in the metropolis, at length, *Rep. ii. App. 317-321.*

*Sinecures.* There are lucrative sinecures in most of the existing registries, *Rep. ii. 20.*

*Sixth District.* Proposition, that the sixth registration district shall consist of the counties of Hertford, Bedford, Norfolk, Suffolk, Essex, Cambridge, and Huntingdon; number of properties therein, according to the land-tax assessment of 1798; population 1821; area in square miles, and number of parishes, *Rep. ii. 73.*

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*Smith & Bayley, Messrs.* Communication from Messrs. Smith & Bayley, of Basinghall-street, on the inexpediency of a general register, and recommending the abolition of the local registers, *Rep. ii. App. 112.*

*Smith & Wilkinson, Messrs.* Communication from Messrs. Smith & Wilkinson, of Horbelling, Falkingham, Lincolnshire, showing the inexpediency of a general register of deeds, *Rep. ii. App. 112.*

*Smyth, Acoute.* Communication from A. Smyth, of Cork, suggesting printing as a means of registry, *Rep. ii. App. 113.*

*Solicitors' Charges.* The emoluments of solicitors will be affected by a registry; proposed regulations, *Rep. ii. 65.*

*Somerset.* Number of properties, according to land-tax assessment of 1798; area, parishes, &c., *Rep. ii. 73.*

*Spence & Desborough, Messrs.* Communication from Messrs Spence & Desborough of Size-lane, in favour of a general registry, answering circular so far as relates to the fraudulent suppression of deeds, and favouring the plan for the deposit of title deeds; also giving a detailed statement of fraudulent suppression of deeds, *Rep. ii. App. 258-260.*

*Stafford.* Number of properties, according to the land-tax assessment of 1798; area, and number of parishes, *Rep. ii. 74.*

*Stamp Duties.* Objections to the stamps on memorials; they operate against registration, *Rep. ii. 79*—The memorial and affidavit of execution should be exempt from stamp duty, *Rep. ii. App. Seymour 111*—No stamp should be required for the registry, *White 57*—No instruments or documents connected with registration should be subject to stamp duty, *Woodroffe 131.*

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Unless the *ad valorem* duty be diminished, and other considerable alterations made in the Stamp Act, sales and mortgages should not be subject to further expense, *Rep. ii. App. Woolcombe 131*—Suggestions with regard to stamp duty under a system of general registration, *Palgrave 198*—The stamp duty on small purchases requires to be lessened, *Carrett 217*—Supposition, that the greater portion of the stamp duty arises on conveyances of small property, *Messiter 247.*

*Stamp Office.* The returns from the Stamp Office will not show the average number of deeds relating to real estate, because they make no distinction between the stamps used for instruments relating to real and to personal property, or between those used in England and in Scotland; several stamps are frequently put upon one deed, in order to make up the requisite amount of duty, *Rep. ii. 70*—Reason why a return from the stamp office would not show the proportion that small purchases bear to large ones, *Rep. ii. App. Walters 70.*

*Standing Commissioners.* The deputy registrars should be the same persons as the standing commissioners, to be appointed pursuant to the twenty-fourth proposition in the First Report on Real Property, *Rep. ii. App. Bacon 64.*

*Stationery.* Estimated amount which will be required for stationery for the use of the proposed general register office, *Rep. ii. 76.*

*Statute of Frauds.* The Statute of Frauds annuls, even as between parties, all contracts relating to land, unless evidenced by writing, *Rep. ii. 39*—Observations upon the Statute of Frauds, 29 Car. 2, *Rep. ii. App. Dugmore 96*—If the Statute of Frauds were more strictly adhered to, the necessity of a general registration would be diminished, *Watson 115*—The good sought by a general registration would be better attained by more strictly enforcing the principle of the Statute of Frauds, *ib.*

*Statute of Inrolment.* The Statute of Inrolment of Bargains and Sales, passed in the reign of Hen. 8, had for its object the removal of the evils occasioned by the ancient mode of conveyance of corporal livery, *Rep. ii. 18*—Respects in which the Statute of Inrolment is deficient, *ib. 31*—The object of this statute is to afford protection against secret and fraudulent conveyances, *Rep. ii. App. Balfour 27*—The statute 27 Hen. 8, c. 16, was designed to prevent the Statute of Uses from introducing secret transfers of land, *Longley 45*—Objects intended to be effected by passing the Statute of Inrolment, *Bacon 61*—Remarks upon the Statute of Inrolment, 27 Hen. 8, *Dugmore 96.*

*Statute of Uses.* This statute, passed in the reign of Hen. 8, had in view the removal of the insecurity of titles from the introduction of uses and trusts, *Rep. ii. 18*—Before the Statute of Uses, the mode of transferring land was almost equivalent to registry, *Rep. ii. App. Walters 7*—The 27 Hen. 8, c. 10, was intended to unite the seisin and legal ownership with the beneficial enjoyment of land, *Longley 45*—Objects of the Statute of Uses, 27 Hen. 8, c. 10, *Bacon 61*—Observations on the Statute of Uses, 27 Hen. 8, *Dugmore 96.*

*Statutes of Limitation.* The Statutes of Limitation respecting real property act unfairly to persons out of possession of their rights, which would be remedied by a general register, which would make a short period of limitation more consonant to justice, *Rep. ii. 18*—The provisions of the Registry Act should not interfere with the Statutes of Limitation, *ib. 43*—The Statutes of Limitation should be repealed, *Rep. ii. App. Walters*

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*Walters 8, note* \*—Saving out of the exception in the Statute of Limitation, 1 Jac. 1, c. 11, with regard to persons being beyond the seas for more than seven years, *Rep. ii. App. Lowndes 25*—Doubts whether the Statutes of Limitation, as regards real actions, should be reduced under sixty years, *White 120*.

*Statutes Staple, and Statutes Merchant.* These securities have become nearly obsolete, but if not abolished, they should be registered, *Rep. ii. 30*.

*Stephenson, James.* Examination of James Stephenson, deputy registrar for the West Riding of Yorkshire, on the commissioners' circular; he considers a close register preferable to documents being registered at length, *Rep. ii. App. 395-398*.

*Stevens, William.* Observations and suggestions as to judgments, Crown debts and registry, by William Stevens, of Frederick's-place, Old Jewry, *Rep. ii. App. 260*.

*Stewards of Manors.* Stewards of manors should be required to make and keep up an index of reference, to which access should be allowed at all reasonable times, *Rep. ii. App. Walters 7, note*.

*Subordinate Registry.* Suggestion for the establishment of a subordinate registry, in each county; its objects, *Rep. ii. App. Measure 70*.

*Subsequent Acts.* Benefit will arise from a registry, by titles not being liable to be defeated by the subsequent acts of third parties, *Rep. ii. 63*.

*Substitute for Registration.* Regulations suggested as a substitute for registration, *Rep. ii. App. Montrou 106*.

*Substitution of Deeds.* Substitution of deeds would be prevented by a general register, *Rep. ii. 17*.

*Suffolk.* Number of properties according to the land-tax assessment of 1798; area, and number of parishes, *Rep. ii. 73*.

*Sugden on Vendors.* Reference to Sugden on the law of Vendors and Purchasers, 8th edition, relative to suppression of deeds, *Rep. ii. 6, note*.

*Suits in Equity.* Statement as to when suits in equity are, and when they are not considered as notice, *Rep. ii. 11*—The records might supply evidence in a suit where an opposite party refused to give up the title deeds in question, *Rep. ii. App. Balfour 33*.

*Summary of Contents.* Every deed should have annexed to it a brief summary of its contents, to be copied into the register, to save constant reference to the same deed, *Rep. ii. App. Walters 9*.

*Suppression of Deeds.* Facility for the suppression of deeds; no accomplice is requisite; the discovery is not likely to take place till after the death of the party practising the fraud, *Rep. ii. 5*—References to various law books, showing the classes of cases of purchases, mortgages, &c., with regard to evils arising from the suppression of deeds, *ib. 6*—Parties against whom deeds are produced, yield without a struggle, or upon terms of compromise, often without taking the opinion of counsel, *ib.*—The suppression of deeds ought always to be guarded against by purchasers and mortgagees, *ib. 7*—The present means of inquiry do not give security against the suppression of deeds, *ib.*—A general register would prevent insecurity from the suppression of deeds, *ib. 14. 55. 63*.

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Instances given of the suppression of settlements, *Rep. ii. App. Wilson 179*—Suggestions for preventing the suppression of deeds without a register, by indorsement of notice on other deeds, *Dixon 180*—Instances of the suppression of settlements and mortgages; statement in detail of one case of fraudulent suppression, *Spence 258, 259*—Suppression of settlements might be prevented without registry, by an indorsement on the principal deed, *Stevens 261*.

Questions circulated and put by the commissioners, as to whether there are any means of discovering that every instrument affecting the title has been produced? *Rep. ii. App. 138*—Written answers, 146-293; *viva voce* answers, 298-428—Whether there are any instances known of the fraudulent suppression of settlement, under which the vendors who pretended to sell the fee-simple, were mere tenants for

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life? *Rep. ii. App. 138*—Written answers, 151–293; *vivâ voce* answers, 298–411—Whether any cases of the fraudulent concealment of mortgages have been met with? *Rep. ii. App. 138*—Written answers, 151–281; *vivâ voce* answers 298–428—Whether any colourable titles have been made by suppressing imperfect or objectionable instruments, where any apparent title could be shown without them? *Rep. ii. App. 138*—Written answers, 146–294; *vivâ voce* answers, 298–411—Whether any cases have been met with in which general descriptions in deeds, relating to part of an estate, were alleged to have included other parts of it to which the title was objectionable? *Rep. ii. App. 138*—Written answers, 148–281; *vivâ voce* answers, 298–406.

Questions whether deeds relating to one piece of land have been produced to make out a title to land of a similar description? *Rep. ii. App. 138*—Written answers, 146–281; *vivâ voce* answers, 298–405—Whether cases have been met with in which settlements or other deeds have been altered, or a counterfeit deed of the same date substituted in the place of the original? *Rep. ii. App. 138*—Written answers, 148–281; *vivâ voce* answers, 298–405—Whether there have been any other instances of mischief from the fraudulent or accidental suppression of deeds? *Rep. ii. App. 138*—Written answers, 149–281; *vivâ voce* answers, 298–495—Whether it is not the general practice, in the investigation of titles, to act with a view to the possible existence of such cases of fraud or suppression, and to incur great expenses in obtaining protection against them? *Rep. ii. App. 138*—Written answers, 148–294; *vivâ voce* answers, 298–412.

*Surrender of Terms.* Objection to terms assigned to attend to the inheritance being presumed to be surrendered, *Rep. ii. 12*.

*Surrey.* Number of properties, according to the land-tax assessment of 1798; area, number of parishes, *Rep. ii. 72*—Proceedings on a Bill for the public registry of all deeds, &c. affecting land in Surrey, brought into the House of Commons 28th February 1729, *Rep. ii. App. Bramwell 87*.

*Surveys.* In most of the states of Europe in which registration founded on survey is adopted, the register is confided to the care of local tribunals, and correctness is secured by a judicial proceeding, *Rep. ii. 26*.

*Sussex.* Number of properties, according to the land-tax assessment of 1798; area, number of parishes, *Rep. ii. 72*.

*Swann, Charles James.* Report made to the commissioners as to the registers in Scotland, by Charles James Swann, secretary to the Commission, *Rep. ii. App. 507*.

*Sweden.* Ordinance of the King of Sweden, showing the system of registration in that country, *Rep. ii. App. 466–473*.

*Sweet, Samuel White.* Communication from S. W. Sweet, of Basinghall-street, showing a general registry to be inexpedient, *Rep. ii. App. 114*.

*Symbols.* Proposition, that a symbol of the class in which a document is indexed, be written in the margin of the document, or indorsed on it by the officer of the register, *Rep. ii. 51, 52*—Proposal, that provision be made for cases where it may be desired to bring together, as to future title, lands held under separate titles, or partial interests held under separate titles in the same lands, by a power to index, under an existing symbol, titles not derived under any document before indexed under that symbol, *ib. 53*—Causes from which errors may arise with respect to the head of the title or symbol, *ib. 59*—Clerical mistakes in the symbol may be effectually provided against by checks in the office; checks proposed, *ib.*

*Synopsis of Deeds.* A synopsis of every deed should accompany it to the registry, *Rep. ii. App. Walters 50; White 57*—Objections to the plan for a synopsis of deeds, *Hayes 56; Adlington 75*—What the synopsis office should contain; its advantages counterbalance any additional expense, *Woodroffe 128*—Nature of the duties to be performed in this office, *ib. 130*—Proposed contents of synopsis of deeds to be prepared by the solicitor preparing the deeds, and to be filed at the register office, *ib. 129*.

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*Tacking Securities.* Particulars of the system of tacking securities, which is not prevented by notice; this will be remedied by a general register, *Rep. ii. 15*—In Jamaica, the effect of a registry is to prevent tacking and equitable liens arising from the deposit of title deeds, *Rep. ii. App. Burge 43*—Nature of the system of tacking mortgages, and evils arising therefrom, *Bacon 62*.

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**Tax on Registration.** A small tax on registration would repay the original expense of erecting, and defray the ordinary expenses of maintaining the register office, *Rep. ii. App. Longley 45*—The expense of the establishment might be defrayed by a small fee on each instrument registered, or an *ad valorem* duty on the consideration money, charging double on a sale to that charged on a mortgage, *Askew 48*.

**Taxation.** Proposal with regard to the taxation of conveyancing bills, *Rep. ii. 65*.

**Taylor v. Jones.** Reference to this case, 1 Salk 389, as to the authentication of bargains and sales for the purpose of enrolment, *Rep. ii. 33*.

**Taylor, William.** Answers of William Taylor to questions circulated by the commissioners on the subject of the registry in the West Riding of Yorkshire, *Rep. ii. App. 491*.

**Tenants.** Where an estate is in the hands of tenants, the purchaser is deemed to have notice, not only of their actual leases, but of all agreements relating to the property made with their landlords, *Rep. ii. 12*.

**Tenants in Common.** Evils of the present state of the law as regards tenants in common, *Rep. ii. App. Jones 144*.

**Terms of Years.** The estate vested in a mortgagee or trustee is frequently a long term of years; effect thereof, *Rep. ii. 8*—Distinction between a term being attendant on the inheritance by construction in equity and by express assignment, and the protection afforded by an express assignment, *ib.*—Mode by which a term attendant by express assignment operates as a protection, and is made available to successive purchasers, *ib. 9*—Reasons for keeping up a great number of terms in the same title, *ib. 10*—When an assignment of a term has been obtained, the protection afforded by it may be lost through accident or carelessness, *ib. 11*—The protection is precarious and inadequate, *ib. 10. 12*—The protection of a term is confined to its duration, *ib. 12*—In a great proportion of titles there are no terms to afford protection, which is an answer to those who consider such protection renders unnecessary the establishment of a general register, *ib.*

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**Third District.** The third registration district should consist of the counties of Dorset, Devon, Cornwall, Somerset, and Wilts; properties, population, area, parishes, *Rep. ii. 73*.

**Thompson, Benjamin.** Communication from B. Thompson, of Workington, against a register, *Rep. ii. App. 115*.

**Thomson, Thomas.** In the reports of Mr. Thomas Thomson to the Commissioners of Public Records, there is much important information to be found as to registration, *Rep. ii. App. Balfour 32*—Letter from Thomas Thomson to C. J. Swann, as to the number of instruments registered in Edinburgh, *Rep. ii. App. 511*.

**Time for Registration.** The time to be allowed for registry should be computed from the date of the instruments, *Rep. ii. App. Bacon 64*—Suggestions with regard to the time of registration, *Measure 70; Adlington 74, 75*—Subject to certain suggested provisions, a deed might be registered at any time, whether the parties be living or dead, *Adlington 76*—No time should be prescribed for registration, *Coles 94*—A certain time should be allowed for registry after the execution of a deed by the first party, *Meymott 106*—Difficulties in the way of a general registry, whether there be or be not a limitation of time for registry, *Wimburn 125*.

Questions circulated by the commissioners as to whether if a time be limited, deeds should be permitted to be registered after that time? *Rep. ii. App. 140*—Written answers, 147–286; *viva voce* answers, 302–434—As to whether any instrument should be void, if not registered within a limited period? *Rep. ii. App. 140*—Written answers, 147–287; *viva voce* answers, 302–434—Whether any instrument should be inadmissible in evidence until registered? *Rep. ii. App. 140*—Written answers, 147–287; *viva voce* answers 302–428—And also whether the necessity for allowing any time for registry, might not be prevented by permitting the registration of caveats? *Rep. ii. App. 140*—Written answers, 147–294; *viva voce* answers, 302–428.

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Questions circulated by the commissioners as to whether the mischiefs which arise from deeds being mislaid or destroyed, might not be prevented by depositing them at the register office? *Rep. ii. App. 139*—Written answers, 147-294; *vivâ voce* answers, 299-424—Whether safe titles are not often rendered unmarketable by the loss of deeds, or the inability to produce them? *Rep. ii. App. 139*—Written answers, 148-294; *vivâ voce* answers, 299-425—Whether safe titles are not often rendered unmarketable by the want of an available covenant to produce deeds? *Rep. ii. App. 139*—Written answers, 148-294; *vivâ voce* answers, 300-415—Whether considerable difficulties and inconveniences are not experienced, and expenses incurred, in searching for deeds which are missing, and in securing the production of title deeds? *Rep. ii. App. 139*—Written answers, 148-294; *vivâ voce* answers, 300-415.

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*Titles.* In all civilized countries the title to land depends on written documents, *Rep. ii. 3*—The present assurances of title are, possession of the land, and possession of the deeds, *ib. 4*—A considerable portion of the real property in England has either a title unsafe, yet marketable, caused by the want of security against latent deeds, or is rendered unmarketable, though substantially safe, through the want of means of procuring the formal requisites of title, *ib. 17*—Provisions necessary for connecting the title prior to the commencement of the registry with the register title, *ib. 47*.

Titles will be improved by the system of order that will be induced by a general register, *Rep. ii. 56* and *App. Fonnereau 11. 97*; *Longley 45*; *Walters 50*; *Hogg 54*; *Hayes 55*; *Adlington 72*; *Coles 90*; *Ridding 110*—Outlines of a plan that each title shall have its own register, by the title deeds being accompanied by a roll by way of index, containing certain particulars, *Dugmore 10*—The records will assist vendors in proving an unbroken chain of instruments for 60 years, *Balfour 33*—Registration in Jamaica does not, and ought not of itself, to supply a defect in the grantor's title, *Burge 43*—Suggestions for ascertaining the titles of every acre of land in the kingdom, and entering them in a book; this plan has been adopted in some parts of the Continent, *Hogg 52*—Suggestion, that no estate registered should, after a certain number of years, be subject to any question as to title, *Fonnereau 97*.

*Tompson, George.* Answers to circular of the commissioners by George Tompson, in favour of an open register, and in the metropolis; it should be a full registry, *Rep. ii. App. 261-274*.

*Traders.* A large proportion of the property of a trader does not consist of real estate; raising money upon the security of real property would be no proof of the diminution of his wealth, as it might be employed in his business, *Rep. ii. 22*.

*Transcripts of Records.* How transcripts of records are to be verified, (New York St., sec. 26,) *Rep. ii. App. 479*.

*Transfer of Property.* Investigations of title take place to a great extent, except in small properties, and occasion a considerable portion of the delay and expense attending the transfer of property, *Rep. ii. 7*—Suggestions, that after a certain number of years an estate shall be capable of transfer by the mere change of names on the registry, *Rep. ii. App. Fonnereau 97*—The transfer of real property should be as free and unshackled as possible, and not subject to a system open to evil, and perhaps to fraud, *Smith & Wilkinson 113*—If the utility of registration is confined to particular cases, it seems unjust to incumber other transfers with registration, *Watson 116*.

*Treasurers of Counties.* Treasurers of counties might be selected for the office of registrars, *Rep. ii. App. Adlington 78*.

*Trust Deeds.* Parties should be at liberty to leave unregistered trust deeds affecting only the person of trustee and not the land itself, *Rep. ii. App. Hawkins 98*.

*Trustees.* Particulars as to legal estates vested in trustees, *Rep. ii. 8*—Expense, delay, and difficulty frequently arise in finding the trustees in whom the terms have been vested, or in tracing their representatives, *ib. 10*—Proposed mode of registering appointments of new trustees of estates, held under a general devise, and the conveyances of the estate to new trustees, *ib. 46*—Appointments of new trustees of estates devised should be registered in a department connected with the register of wills, *ib. 55*  
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—Reasons why it frequently happens that the will of a trustee of a term, or the administration to his effects, is not proved or obtained in the proper court, and why this more frequently occurs in small estates than large ones, *Rep. ii. 68*—It is continually necessary to prove the wills, or to administer to the effects of trustees of terms, and great delay and expense are the consequence, *ib. 69*—If a party is only a trustee, it should be so stated in the index, *Walters 68*—Suggestions for excluding trustees' names from an index, *Carrett 217*.

*Trusts.* By recording a trust, a purchaser might be prevented from accepting a conveyance from the trustee, which would extinguish the trust, *Rep. ii. App. Balfour 33*.

*Turner, Samuel.* Examination of Samuel Turner (on the subject of the commissioners' circular on registration); he prefers a close register, to be situated in the metropolis, the registry being at length, *Rep. ii. App. 349-354*.

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*Undivided Shares.* In cases of grants of undivided shares, registration might be advantageous, *Rep. ii. App. Watson 115*.

*Unlimited Search.* Serious inconvenience would not result from allowing unlimited search of the registry, *Rep. ii. App. Adlington 74*—Evidence in favour of unlimited search, *ib.*—Curiosity should be prevented, and yet not too much difficulty thrown in the way of searching the register, *Messiter 104*.

*Unmarketable Titles.* The loss or destruction of deeds renders many titles unmarketable, and causes expense, delay, and litigation, *Rep. ii. 16*—Manner in which a title may be rendered unmarketable by a memorial of deed appearing on the register, *ib. 31*.

*Unregistered Deeds.* A person having contracted for a purchase without notice of a prior unregistered deed, might use such deed, when discovered, as a defence against a bill for a specific performance or an action by the seller, *Rep. ii. 40*—Case in which evil may arise from the non-registration of deeds, *ib.*

Evils arising from courts of equity holding that registering a deed is not notice of it, and giving validity to unregistered deeds, *Rep. ii. App. Walters 7*—No effect should be given to unregistered instruments, *ib. 7. 50*—Unregistered deeds should be void, *ib. 7, note; Bacon 63; Meymott 105*—Manner in which they should be allowed to be called for by parties interested, for the purpose of being registered, *Bacon 65*.

No notice of an unregistered instrument should be binding unless such notice existed during the period allowed for registration, *Rep. ii. App. Bacon 65*—Neglect to register within a reasonable time should afford subsequent purchasers and mortgagees an opportunity of gaining a priority by first registering their deeds, *Leach 102*—The immense number of unregistered deeds, compared with the litigation and injury arising from suppressed deeds, is the strongest proof of the absence of necessity of a general registry, *Sweet 114*.

*Uses.* In England, freehold property, being frequently alienated by raising a use in the land, registration seems doubly necessary, *Rep. ii. App. Balfour 33*.

## V.

## VALIDITY OF DEEDS, DOCUMENTS, &amp;c.

1. *Advantages of making all Deeds void unless registered.*

2. *Objections to making Registration essential to the validity of Deeds.*

1. *Advantages of making all Deeds void unless registered;*

The registry of the instrument should be necessary to its validity, *Rep. ii. App. Walters 7; Fonnereau 96; Lindsay 102*—Under a universal registry, registration ought to be as essential to a deed as its execution, *Lane 15*—The validity of wills should be tried before the courts of common law instead of the ecclesiastical courts, *Burge 43*—The register will never be a perfect record of title while documents are allowed validity independently of registration, *Adlington 76*—On failure of registry within a given number of days, the deed should, as against those registered before it, be void, *ib.*

All instruments not registered within six months should be invalid, *Rep. ii. App. Hodgson 99; Messiter 105*—Neither conveyance nor incumbrance should take effect unless registered in a given time after execution, *Sherard 112*—Registration should be made within a short limited time after date, and on failure the instrument should be absolutely void, *Whincop 118*—Suggestion that all transactions with real property not registered within a certain period, be wholly void, *Wilkinson 124*—Unregistered instruments, even with notice, should have no effect, *Woodrooffe 131*.

**VALIDITY OF DEEDS, &c.**—continued.**2. Objections to making Registration essential to the validity of Deeds:**

Registration need not be made essential to the validity of a deed, *Rep. ii. App. Longley 45; Askew 48; Coles 94*—Objection to making a deed void in default of registering it within a given period, *Adlington 76*—To declare that a deed should have no force or validity till registry, would lead to embarrassing questions, *ib.*—Effect that will be produced by a register if no deed be valid till registered, *Watson 116*.

**Value of Land.** The marketable value of landed estates will be increased by a general register, *Rep. ii. App. Longley 45; Wilson 47; Adlington 72; Blanchard 86*—The expenses of registration being a charge on real property, would lessen its value, *Atkinson 79*—Suggestion for ascertaining whether the present local registries have any effect on the value of, or finding purchasers for, estates situate in other counties in England, *Nares 108*.

**Vendors and Purchasers.** Suits between vendors and purchasers would in time be prevented, *Rep. ii. App. Walters 50*—All instruments being registered, would preclude a vendor, who, selling part of his property, retains the title-deeds, from selling the same estate over again, *Hawkins 98*.

**Verification of Births, &c.** The particulars of births, marriages, and deaths should be accompanied by an affidavit of two credible witnesses of the circumstance intended to be recorded, with particulars of identity, *Rep. ii. App. Lowndes 19*.

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*Chivalry*, Tenure in. During the minority of an heir in chivalry, the lord was entitled to the possession and profits of all his lands, *Rep.* iii. 3—An infant heir in chivalry was obliged to pay half a year's profits of the lands before he was put into possession of them, *ib.*—Under the tenure in chivalry, the heir was obliged to marry the wife selected for him by the lord, or to pay the value of the marriage, *ib.*—When an heir in chivalry came of age, he was subject to great vexation in the Court of Wards and Liveries, *Rep.* iii. App. 3.—See also *Infants*. *Knighthood*.

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*Church Manors.* The propositions as to enfranchisements will require modification with respect to manors held by the Church, *Rep.* iii. 18—Proposition, that the powers proposed to be given for enfranchisement shall not be exercised by an archbishop, bishop, dean, or prebendary, without the consent of the chapter, or by a parson or vicar, without the consent of the patron and ordinary, *ib.* 67—See also *Queen Anne's Bounty*.

*Clergy*, The. Course to be pursued with regard to the claims of the clergy generally, *Rep.* iii. 59—Difficulties the clergy have to encounter with regard to property "extra commercium," held in trust for the public, *ib.*

*Codification.* If tenure were abolished, many questions would arise upon the meaning of the terms in which the existing law would be declared, and all the dangers and evils of codification would be encountered, without its advantages, *Rep.* iii. 4.

*Coheirs in Gavelkind.* Objection to giving power to one of the coheirs in gavelkind to convey trust estates, *Rep.* iii. 11.

*Coke, Sir Edward* (or Lord). In the time of Lord Coke, copyhold tenure was much more common than at present, and the land that was not of base tenure was principally held in chivalry, *Rep.* iii. 7—His definition of a remainder, *ib.* 23—Opinion of Sir Edward Coke as to perpetuities, *ib.* 29—Observation by Lord Coke (2 Co. 51), on the doctrine of possibilities, *ib.*—Reference to Co. Litt. 324 (b), as to covenantor having an interest in land, *ib.* 52.

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*Comyn's Digest.* Reference to this work as to the definition of real covenants, *Rep.* iii. 44.

*Conditional Fee.* Nature of a fee simple conditional at the common law before the statute *De Donis*, *Rep.* iii. 36.

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*Conditions of Sale.* The provisions as to calling for the production of title-deeds inserted in conditions of sale, often lead to difficulties and litigation, *Rep.* iii. 56.

*Consent.* Rule of perpetuities as regards powers to be exercised by consent; suggestions with respect thereto, *Rep.* iii. 43.

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*Continuing Obligations.* Objection to declaring that certain covenants create continuing obligations as well at law as in equity against owners of land; persons might be sued for an obligation when its existence was unknown, *Rep.* iii. 55.

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*Copyholders.* Copyholders of old Crown manors are sometimes considered tenants in ancient demesne, but they are not so, *Rep.* iii. 12—The copyholders in an ancient demesne manor are merely considered as occupying a part of the lord's demesne, and do not hold of the manor, *ib.* 13—These copyholders are hardly to be distinguished from other copyholders, *ib.*—Statement of the rights of copyhold tenants, *ib.* 14.

**COPYHOLDS :**

1. *Their Origin ; Advantages and Disadvantages.*

2. *Propositions for the Amendment of the Law with regard to them.*

1. *Their Origin ; Advantages and Disadvantages :*

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*Corruption of Blood.* Under gavelkind tenure, upon a conviction of felony, there is no escheat by reason of corruption of blood, *Rep.* iii. 9—The exemption from corruption of blood on attainder for felony, was a valuable privilege in times of violence and tyranny, *ib.*—By the statute 54 Geo. 3, c. 145, corruption of blood is now invariably saved upon attainder of felony, except in cases of treason, petit treason, and murder, *ib.*

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#### COVENANTS:

1. *Examination into the Nature, Effect, and Power of Covenants, and the various Forms thereof.*

2. *Propositions for the Amendment of the Law with respect to Covenants.*

1. *Examination into the Nature, Effect, and Power of Covenants, and the various Forms thereof:*

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**Cumberland.** Customary freehold prevails in this county, *Rep.* iii. 20.

**Curtesy.** In gavelkind lands the husband is tenant by the curtesy of his deceased wife's land, whether there were issue born alive or not, *Rep.* iii. 9—The husband should be entitled to be tenant by curtesy, whether there were issue or not, which should become the general law of the land, *ib.*—See also *Descent, Curtesy, and Dower.*

**Customary Courts.** The copyholders form the customary court, *Rep.* iii. 13—Proposition, that a customary court for taking surrenders and granting admissions of copyhold tenements, and for other proceedings relating to the conveyance thereof, may be held by any lord of a manor or his steward, notwithstanding there may be no longer two copyhold tenements of the manor, and although no copyhold tenant be present, *ib.* 68.

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**Customary Payments.** Where customary payments in lieu of tithes, so small as to have been neglected or forgotten, have been made, the exemption should be absolute, *Rep.* iii. 60.

**Customs.** The multiplicity and uncertainty of customs in different manors is one of the greatest evils of copyhold tenure, *Rep.* iii. 14—Variety of customs in regard to the creation of copyholds, mode of descent, curtesy, dower, and the taking of timber and minerals, *ib.*

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**Debts.** Copyhold property not being subject to the debts of the owner, is a reproach to the law, *Rep.* iii. 16—Proposition, that all copyhold tenements shall be subject to debts and specialties in the same manner as freehold lands, *ib.* 19. 68—A power of sale for payment of debts generally is not within the reasons of the rule against perpetuities, *ib.* 35.

**De Donis Conditionalibus,** Statute of. The statute *De Donis* converted conditional fees into estates tail; subsequent limitation considered as the ultimate remainder in fee, *Rep.* iii. 23—The statute *De Donis Conditionalibus* allowed perpetual entails, *ib.* 29.

**Defects in Title.** A defect in the title of lord or tenant should not vitiate enfranchisement made in consideration of part of the land or of a rent, *Rep.* iii. 18.

**Descent, Curtesy, and Dower.** Proposal, that peculiar customs respecting descent, curtesy, and dower be abolished, and the common law rules on these subjects prevail, *Rep.* iii. 18, 19.—See also *Curtesy.* *Dower.*

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**Devises.** All distinction between devises of gavelkind and other freehold land has been taken away by the Statute of Frauds, 29 Car. 2, *Rep.* iii. 9—Inconveniences pointed out arising under the Act 55 Geo. 3, c. 192, for removing difficulties in the disposition of copyhold estates by will, *ib.*—Statement of the mode of devising copyholds, *ib.* 21.

Specific enactment required with regard to devises of customary freeholds, *Rep.* iii. 20—Statement of the mode of devising customary freeholds, and of the inconveniences arising from it, *ib.* 21—Customary tenants should have the direct power of devising customary freeholds, *ib.* 22—An extension of the statute 55 Geo. 3, c. 192, to customary freeholds would be an improvement of the law, *ib.*

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**Disgavelling Acts.** Number of disgavelling Acts passed; difficulty of ascertaining the disgavelled lands; in the majority of instances the lands have returned to the custom, *Rep.* iii. 11.

**Disgavelling Lands.** Objection to allowing every tenant in fee of gavelkind land, by instrument inrolled, to declare the land disgavelled, *Rep.* iii. 11.—Instance given in which great trouble and expense were incurred in consequence of a regular gavelkind title being shown to lands in Kent, which had been disgavelled, *ib.* 12.

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**Documentary Evidence.** Unsatisfactory nature of documentary evidence in church cases, *Rep.* iii. 59.

**Dominium Directum.** Persons of great learning have proposed its abolition, *Rep.* iii. 3.—The commissioners have no hesitation in recommending that this principle of tenure should be retained, *ib.*—Nature of this fundamental principle of tenure by which the absolute property of all lands is vested in the Crown, and subjects' lands held of some superior, *ib.*

**Dominium Utile.** The dominium utile of socage lands, vested in the tenant, comprises the sole and undivided interest in the soil, *Rep.* iii. 8.

**Double Possibility.** The rule that a remainder could not be limited on a double possibility had no reference to perpetuity, *Rep.* iii. 29.—The existence of the rule as to double possibility is extremely doubtful, *ib.*—Legislative declaration recommended to settle the law as to double possibility, *ib.*—See also *Nottingham*, Lord Chancellor.

**Double Titles.** Inconveniences experienced at present in the investigation of double titles on enfranchisement, *Rep.* iii. 18.

**Dower.** In gavelkind lands the widow is dowable of one-half instead of a third, *Rep.* iii. 9.—The regulations suggested in the First Report, with respect to dower, should, if approved of, be generally adopted, *ib.*—There is no reason why the proportion of the husband's lands to be enjoyed by the wife should be different in different counties, *ib.*—In most manors a copyholder may alien without any impediment from his wife's dower, she being dowable only of the land of which he dies seised; it is proposed to extend this rule to freehold lands, *ib.* 17.—In what manner conveyances to bar dower are settled, so that the covenants do or do not run with the land; remedy required, *ib.* 52.

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**Dumfry's Case.** Reference to this case, 4 Co. *Rep.* p. 119 b, as to licence for underletting, *Rep.* iii. 49, note \*.

**Durham.** Customary freehold prevails in the south-western parts of the county of Durham, *Rep.* iii. 20.

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**Easements.** In what cases the rule of perpetuity should extend to easements, *Rep.* iii. 43.

**Ecclesiastical Property.** Since the Reformation, ecclesiastical property is held by corporations aggregate, or passes to successive incumbents, as if it were allodial, *Rep.* iii. 7.

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**Ellison, P. G.** Communication from P. G. Ellison, on the uncertainty arising under Act 55 Geo. 3, c. 192, as to the disposition of copyholds by will, *Rep.* iii. *App.* 9.

**Enjoyment.** Where there is evidence of enjoyment for a considerable period in church cases, the court refers the question of immemorial antiquity to a jury, *Rep.* iii. 59.

**Enfranchisement of Copyholds.** Difficulties in the way of a general enfranchising of copyholds, *Rep.* iii. 17.

Questions as to the enfranchisement of ecclesiastical copyholds submitted by the commissioners to the Bench of Bishops, *Rep.* iii. *App.* 12.

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the redemption of land-tax, or the discharge of incumbrances, or be laid out in land, but in the meantime to be invested in the public funds, *Rep.* iii. 18. 67—Proposition that every copyhold tenement, which shall be enfranchised, shall continue to form part of the manor, and every rent reserved in consideration thereof shall be a rent service, *ib.*

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*Enjoyment.* It is desirable that there should be a final settlement between the church and the laity, upon the basis of present enjoyments, but not so as to give sanction to usurpation, *Rep.* iii. 58—With respect to moduses and exemptions, a reasonable period of actual enjoyment may be safely assumed as the criterion of the rights of the clergy and laity, *ib.* 61.

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*Equitable Estates.* Inconveniences arising from the uncertainty whether equitable estates in fee simple are subject to escheat, *Rep.* iii. 4—Proposition, that equitable estates in fee simple should escheat instead of the trustee becoming entitled to the beneficial interest, *ib.* 5.—See also *Legal and Equitable Estates.*

*Equity.* Where the reversion shall have been divided amongst different persons, the remedy on the lessor's covenants can only be by suit in equity, *Rep.* iii. 49—In some cases courts of equity have refused to interfere by way of injunction on covenants in favour of persons uninterested in the land, *ib.* 54—The suitable remedy for covenants in favour of owners of neighbouring property, is to force specific performance in equity, *ib.* 55.

Equity judges supplied a surrender to the uses of a will of copyhold, though they never ventured to supply the defective execution of a will of freehold land under the Statute of Frauds, *Rep.* iii. 21—It was supposed that an original independent equity existed, entitling a party interested in a deed to call for its production, *ib.* 56—Since the interference of courts of equity had been introduced on its present footing, it was supposed that there existed a direct mode of enforcing the production of title deeds, *ib.* 57.

*Equity of Redemption.* Proposition, that an equity of redemption, to which a person dying intestate and without heirs shall be entitled, shall vest in the lord, *Rep.* iii. 65—Proposition, that an equity of redemption, to which a person dying intestate and without kindred shall be entitled, in a term of years, shall vest in the Crown, but subject to any trust subsisting therein, *ib.*

*Erection of Buildings.* Covenants to erect buildings on demised lands, are, in well-drawn leases, made binding by the assigns being named in them, *Rep.* iii. 46,

*Escheat.* Where freehold land was held of a subject at the time of passing the statute *Quia emptores*, and nothing has since occurred to alter the tenure, the lord of the manor, or other person entitled to the immediate seignory, is still entitled to take by escheat, *Rep.* iii. 4—The loss of the contingent benefit from lands escheating to the Crown could not be felt by any intermediate lord; the chance is too remote to be valued, *ib.*—Circumstances which cause it to be a matter of uncertainty whether land within the ambit of the manor shall, upon escheat, go to the lord of the manor, or to any other subject, or to the Crown, and litigation therefore ensues, *ib.*

One consequence of tenure, which is productive of inconvenience, is the escheat of land upon the failure of heirs of a person dying seised in fee and intestate to the lord of whom it is holden, *Rep.* iii. 4—Escheat is the only material incident of socage tenure beneficial to the lord; while there is an heir or devisee he can in no way interfere, *ib.* 8—Evils of the law pointed out in cases of escheat of property, in consequence of illegitimate trustees dying intestate without issue, *Rep.* iii. *App.* 9, 10.

Propositions for amending the law as to escheat, *Rep.* iii. 65—Proposition, that freehold land, held of a mesne lord, shall escheat for want of heirs to the Crown, in the same manner as if there had been no mesne lord, unless a great rent shall be payable to the mesne lord for such land, *ib.*

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 o 2. 4 F *Exchanges.*



*Exchanges.* Implied conditions for re-entry are annexed upon every exchange at common law, *Rep.* iii. 37.

*Executory Devises.* Effect of courts of justice having permitted that to be done by will, under the name of executory devise, which could not be done by deed, *Rep.* iii. 5—Instance given, showing the distinction between an executory devise and a contingent remainder, *ib.* 25, 26—Proposed assimilation of the law of contingent remainders to that of executory devises, *ib.* 26.

The law as to executory devises pointed out, *Rep.* iii. 27, 28—Limitation of executory devises, &c. ultimately settled at a life or lives in being, and a minority, with allowance for periods of gestation, *ib.* 32—The intent of the proposed rule as to perpetuities is to put settlements by executory use or devise on the same footing as settlements by entail, *ib.* 39.

*Exemption from Tithes.* The subject of an entire exemption of land from tithes considered as regards prescription for the church, *Rep.* iii. 60—Cases occur in which legal exemption cannot be made out by legal evidence, *ib.*—See also *Long Usage*.

*Exemption from Toll.* Tenants in ancient demesne were exempted from paying toll in any part of England, *Rep.* iii. 13—This privilege should be taken away, *ib.*

*Expense of Registration.* Proposed means of minimizing the expense of registration, *Rep.* iii. *App.* 40, 41. 56.

*Expenses of Transfer.* The expenses of transfer are often greatly increased by the variety of tenures, *Rep.* iii. 6.

*Express Warranties.* Express warranties have been superseded in practice, except upon fines levied by the use of covenants for title, *Rep.* iii. 5.

#### F.

*Failure of Heirs.* In case of a total failure of heirs, there is sometimes difficulty to ascertain who is the lord of the fee, *Rep.* iii. 4.

*Family Settlements.* Where a conveyance is made to effectuate a family settlement through the medium of the Statute of Uses, or in the usual mode of barring dower, the covenants frequently become severed from the land, *Rep.* iii. 52.

*Farming Stock.* Covenants to buy or sell stock on a farm at a valuation do not run with the land, *Rep.* iii. 46.

*Fealty.* The discontinuance of fealty sometimes causes difficulty in ascertaining the rights of owners on escheat, *Rep.* iii. 4.

*Fearne, Mr.* Opinion of Mr. Fearne on the state of remainders before vesting, *Rep.* iii. 24.

*Fee Simple.* At present no enfranchisement can be effected unless both parties are entitled to the fee simple, which has impeded enfranchisement, *Rep.* iii. 17—The common law allowed of no limitation to defeat a fee, *ib.* 27—The common law admitted conditions which operated to restore the old fee, but new estates could not be so created, *ib.* 27, 28. See also *Conditional Fee*.

*Fees.* Objection to paying officers of a register by fees, *Rep.* iii. *App.* 49.

*Felony, Attainder of.* See *Corruption of Blood*.

*Fines.* In copyhold property the lord's fines and dues depend upon custom, *Rep.* iii. 15—Arbitrary nature of fines due to the lord on descent and alienation; evils thereof; mode of calculating them, *ib.*

*Fines and Recoveries.* Mischiefs occasioned by the levying of fines and suffering recoveries of ancient demesne lands in a superior court, *Rep.* iii. 13—The proposal contained in the first report would obviate these mischiefs, *ib.*—If fines and recoveries be abolished, it might be enacted that the conveyances substituted for them shall have the same effect as to land held in ancient demesne, as if it were of free and common socage, *ib.*

See also *Recoveries*.

*Forfeiture.* Waste or breach of any of the conditions on which copyhold tenants are supposed to hold, works a forfeiture, *Rep.* iii. 14.

*France.* Difference between the *lex loci* of different provinces of France before the Revolution, and the different tenures sometimes in the same parish in England, *Rep.* iii. 6.

*Frankalmoign.* Frankalmoign is the tenure by which land is usually held by the church; it is excepted by name in the statute of Charles 2, and there is no reason why it should be disturbed; nature of the tenure, *Rep.* iii. 7.—See also *Divine Service*, Tenure by.

*Fraud.*

*Fraud.* There seems no greater reason to apprehend fraud in the voluntary enfranchisement of copyholds than in the execution of powers to lease vested in tenants for life, by almost every settlement, *Rep.* iii. 18—Proposition for enfranchisements or extinguishments being void at law for fraud, *ib.* 67.

*Free and Common Socage.* See *Allodial Lands.* *Escheat.* *Fines and Recoveries.*  
*Lay Fee.* *Socage.*

*Freeholds.* Effect of the feudal maxim that the tenancy to freeholds must always be full, for the performance of services and for answer to actions, *Rep.* iii. 5—Proposition, that where the freehold of any tenement held by copy of court roll has been or may be separated from the manor, the copyholds shall afterwards pass by surrender and admission, as if the tenement continued parcel of the manor, and for the purposes of this proposition the freeholder shall be considered as the lord, *ib.* 68.

*Freeholds in Futuro.* Inconvenient rules of common law with regard to freeholds in futuro, *Rep.* iii. 5—Freeholds to commence in futuro were absolutely void at common law; supposed reasons for this rule, which has been evaded at common law, *ib.* 27—Proposal that the law shall be altered by an enactment that estates of freehold may be conveyed or created to commence at a future time, whether certain or uncertain, *ib.*

*Future Uses.* At an early period courts of justice established the rule that a future limitation should never take effect as a springing use or executory devise, when it could possibly take effect by way of remainder, *Rep.* iii. 24—Future uses distinguished from contingent remainders, *ib.* 28.

Proposition, that an estate of freehold to take effect at a future time, be hereafter created by any assurance by which a present estate of freehold may be created, *Rep.* iii. 69—Proposition, that every contingent remainder, springing, secondary, or shifting use, executory devise, future right of entry for condition broken, and every other contingent and future estate and interest be hereafter (although the contingency may not have happened) granted or devised to the extent of the interest or chance of the party granting, &c.; this proposition not to authorize an estate or interest under a limitation to the heirs of a living person to be granted, &c. during the life of such person, *ib.*

See also *Contingent Remainders.* *Perpetuities.*

## G.

### GAVELKIND TENURE:

1. *Peculiarities of this Tenure.*
2. *Whether expedient to Abolish it.*

#### 1. *Peculiarities of this Tenure:*

Principal peculiarities which distinguish socage lands, subject to the custom of gavelkind, from free and common socage, *Rep.* iii. 8—By gavelkind tenure the land descends to all males in equal degree, in equal shares, *ib.* 9—Advantages of gavelkind over tenure in chivalry, and over ordinary socage as it existed at common law, *ib.*—The peculiarities of gavelkind which continue, respect only descent, curtesy, dower, and alienation, *ib.*—Gavelkind descent is generally controlled by settlements and wills, *ib.* 10.

Where it shall appear by the inspection of ancient records, that lands long treated as gavelkind had once been held in capite or disgavelled, the gavelkind title can only be supported by the fiction of gavelling or regavelling Acts, now lost, having been passed by the Legislature, *Rep.* iii. 12—Answers to the questions circulated by the commissioners on the subject of gavelkind, which are inserted in the Appendix to the First Report, p. 87, *Rep.* iii. App. 6.

#### 2. *Whether expedient to Abolish it:*

The custom of gavelkind should be abolished, *Rep.* iii. 8, 11. 65—This tenure is attended with many serious practical inconveniences which do not admit of an effectual cure, except by its abolition, *ib.* 8—In gavelkind, titles are rendered intricate, and dealings with the property are retarded or impeded on account of the subdivision of land, *ib.* 10—The rule of gavelkind descent considered on political grounds, and objected to, *ib.*—Independently of political considerations, there are mischiefs attending this mode of descent, which cause its abolition to be recommended, *ib.*

Inconveniences more frequently occur in the descent of trust estates in gavelkind, *Rep.* iii. 11—Palliations have been suggested, but have been rejected, *ib.*—The custom of gavelkind and all customs affecting lands held in gavelkind, should be abolished, and such lands be held in free and common socage, *ib.* 65.

If gavelkind be preferable to free and common socage as it now subsists, it ought to be extended over the whole kingdom, *Rep.* iii. 9—The expediency of preserving gavelkind tenure must rest upon its peculiar rule of descent, *ib.*

**GAVELKIND—2. Whether expedient to Abolish it—continued.**

On the abolition of the custom, provision being made for existing interests, and time being given to make the necessary dispositions of property according to the new law, injustice will not be done, *Rep.* iii. 11—By the abolition of the custom, no individual would be deprived of any interest in the land which he now enjoys, and the owner of an estate might settle or devise it in any manner he might think proper, *ib.*

See also *Cessavit. Co-heirs in Gavelkind. Common Law. Copyholds, 1. Corruption of Blood. Curtesy. Devises. Disgavelling Acts. Disgavelling Lands. Dower. Infants. Intestacy. Kent. Writs of Right.*

**GENERAL REGISTER OF DEEDS:**

1. *Expediency of a General Register.*
2. *Suggestions for carrying it into Practice.*

**1. Expediency of a General Register:**

A general register would materially facilitate the adjustment of the difficulty as regards obligations for the benefit of persons uninterested in land, *Rep.* iii. 55—A general register will remove most, though not all, of the inconveniences felt from the same deeds relating to lands of different parties, *ib.* 56.

Communication containing general remarks on the subject of a register, and in favour of an open register by memorial, *Rep.* iii. *App.* 26–32.

**2. Suggestions for carrying it into Practice:**

Suggestions on the subject of a general register; form of index proposed, *Rep.* iii. *App.* 32–36—Suggestions with regard to the buildings necessary for a general registry, *ib.* 41—Proposed means of minimizing delay under a general register, *ib.* 41. 44.

Means proposed for maximizing the aptitude of the machinery of a register, *Rep.* iii. *App.* 41. 46—Means proposed for securing the efficiency of registration, *ib.* 41. 47—Mode of registration proposed, *ib.* 41. 49.

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See also *Expense of Registration. Fees. Manifold Writing. Maps. Post-Office.*

**Gilbert, Chief Baron.** His reasons for the rule as to the vesting of contingent remainders, *Rep.* iii. 24.

**Glastonbury Abbey.** A right to tithes was established, and a modus set aside by appeal to a written document which had belonged to Glastonbury Abbey, *Rep.* iii. 62.

**Glebe Lands.** Disputes as to glebe lands are rare, *Rep.* iii. 62.

**Gloucester, Bishop of.** Answers by the Bishop of Gloucester to questions circulated by the commissioners as to church lands, proposing mode for the enfranchisement of copyholds, stating that ecclesiastics should be restrained from converting church leases into leases for lives, and that caution will be required in adopting a limitation for the church, *Rep.* iii. *App.* 24.

**Graham, The Right Honourable Sir James, R. G. Bart. M.P.** Communication from Sir James Graham to the commissioners on the history and law of customary tenure, and suggesting amendments, *Rep.* iii. *App.* 3–5.

**Grand Serjeanty.** Grand serjeanty was a variety of military tenure, distinguished from common tenancy in chivalry by the honorary nature of the services, which were performed in person to the king, and many of them at the coronation, *Rep.* iii. 7—These services were preserved by the statute 12 Car. 2, c. 24, which converted the tenure substantially into free and common socage, *ib.*—The services are a source of some distinction or profit to the owners of the estates; they do not interfere with the enjoyment or transmission of the land, and give rise to no litigation, *ib.*—It is desirable that this tenure should be preserved, as illustrating the antiquities and history of the country, *ib.*

**Grant, Sir William.** His opinion upon the subject of modelling limitations to perpetuity, *Rep.* iii. 40—His opinion upon covenants not to underlet without licence, running with the land, *ib.* 49.

**Gregory, G. P. F.** Communication from G. P. F. Gregory on the state of the law of eachest, with regard to illegitimate trustees dying intestate, *Rep.* iii. *App.* 9.

**Grinding Corn.** Covenants to grind corn at the lessor's mill do not run with the land, *Rep.* iii. 46—It has lately been considered a covenant relating to the land, so long as the mill and the reversion remained the property of the lessor, *ib.* note †.

*Hale,*

## H.

*Hale, Sir Matthew.* Instance of a covenant in favour of persons taking no property in land, mentioned by Hale in a note on Fitzherbert's *Natura Brevium*, *Rep.* iii. 54.

*Hauling Coals.* Covenants to haul coals to the lessor's house, do not run with the land, *Rep.* iii. 46.

*Heirs.* Suggestion, that in the event of there being no known blood relation of the person dying seised, his heirs general should be let in to the inheritance, *Rep.* iii. 4.—By the common law, the heirs of the covenantor are only bound to the extent of assets they may derive from the ancestor, *ib.* 48.

*Henry VIII.* Objection to the proposition that the period of prescription should go back to the first year of Henry 8th, *Rep.* iii. 62.—If the period of prescription be carried back to the reign of Henry 8, it might as well be carried back to that of Edward 2, *ib.*

*Hereford, Bishop of.* Answers of the Bishop of Hereford to questions circulated by the commissioners as to church property, objecting to the enfranchisement of copyholds, observing upon the powers of renewal and grant of church leases, and upon a statute of limitation for the church, *Rep.* iii. *App.* 17, 18.

*Heriots.* Heriots are a usual incident of copyhold tenure, although freehold lands are sometimes subject to them, *Rep.* iii. 16.—Heriots must be considered as a remnant of that barbarous state of society which existed at their introduction by the Danes, *ib.* 19.—Hardships and inconveniences arising from the lord's claim to heriots, *ib.*

Proposal, that heriots be abolished on a pecuniary commutation, *Rep.* iii. 19.—Proposal, that the claim to the heriot shall be commuted into a right to a sum of money, which may be distrained for, *ib.*—Heriots are property, and cannot be justly abolished without some compensation, *ib.*

Proposition, that no beast or other chattel shall hereafter be seized or demanded as a heriot, in respect of any freehold, copyhold, or customary tenement; but in every case in which a heriot (if one could be found) might now be seized or demanded, the sum of 5 l. shall be paid by the succeeding tenant, and may be recovered by distress or action, *Rep.* iii. 66.—See also *Litigation.* *Valuations.*

*Hurrill, Aaron.* Communication received through Aaron Hurrill, in answer to the questions on tenures circulated by the commissioners, and inserted in the Appendix to the first Report, p. 87, *Rep.* iii. *App.* 6-9.

## I.

*Identification of Lands.* Inconvenience occasioned by the difficulty of identifying copyhold land where freehold and copyhold lands are intermixed, *Rep.* iii. 15.—Improvement is checked, and the public wealth materially diminished by the conflicting rights of the lord and the tenant, *ib.*—Proposition for identifying and fixing the boundaries of freehold and copyhold lands intermixed or adjoining together, *ib.* 67.

See also *Limited Interests.*

*Illegitimate Persons.* Instances of escheats occur not unfrequently from an illegitimate person becoming a purchaser of land, or being made a trustee, *Rep.* iii. 4.

*Improvement of Land.* See *Agricultural Improvements.*

*Incumbrancers.* Proposition, that enfranchisements and extinguishments shall be binding on incumbrancers, and the powers may be exercised notwithstanding any defect of title, *Rep.* iii. 67.

*Indemnity against Charges.* Consideration of the benefit of special covenants to indemnify against existing charges which affect the land, *Rep.* iii. 51.

*Infants.* Hardships to which an infant heir of an estate, held by tenure in chivalry, was exposed, *Rep.* iii. 3.—In gavelkind lands, an infant may alien by feoffment, at the age of fifteen, *ib.* 9.—To what extent the power of aliening land at the age of fifteen may be defended as regards gavelkind lands, *ib.*—See also *Children.*

*Insurance against Fire.* A covenant to keep buildings, within the bills of mortality, insured against fire, being aided by the statute 14 Geo. 3, c. 78, is held to be a covenant running with the land, *Rep.* iii. 46, note \*.

*Interest in Land.* Doubts have prevailed extensively, whether it makes any difference as regards covenants for title, that the covenantor has or has not an interest in the land, which should be negatived by legislative declaration, *Rep.* iii. 52.—Covenants by the owner of land where the covenantee has no interest beyond the covenant, *ib.* 53.

*Intestacy.* The distribution of property which, in the majority of cases, a prudent owner would himself direct, must be considered the proper distribution to be made upon intestacy by the law, *Rep.* iii. 10.—In gavelkind, in case of an intestacy, no sale nor partition, nor lease of the estate can be made until the youngest son can execute a conveyance, *ib.*—Proposition, that land held in trust for a person dying intestate, and without heirs, shall be held by the trustee in trust for the lord to whom the land would have escheated if the deceased person had been seised of the legal estate, but subject to any other trusts subsisting thereon, *ib.* 65.

*Isherwood v. Oldknow.* Reference to this case, (3 M. & S. 382,) as to who is the assignee of the reversion, *Rep.* iii. 47 note †.

## J.

*Judgment Creditors.* The Legislature intended that a judgment creditor should be allowed to take half his debtor's land in execution; it was found that this provision did not extend to copyhold land, *Rep.* iii. 6.

*Juries.* Tenants in ancient demesne were exempted from serving on juries elsewhere than in the lord's court, *Rep.* iii. 13.—This privilege should be taken away, *ib.*

## K.

*Kent.* The custom of gavelkind prevails with respect to socage lands over almost the whole of the county of Kent, *Rep.* iii. 8.—The feeling in favour of gavelkind probably arose from comparing gavelkind with the tenure that would have been substituted for it in former times, instead of comparing it with free and common socage in its improved state, *ib.* 11.—Questions are likely to increase as to what lands in Kent are exempt from the custom of gavelkind, *ib.*—Some lands were held in capite and never were gavelkind; there are many monastery lands there which were held in frankalmoign, and which may not be gavelkind, *ib.* 12.

There is nothing in the situation or circumstances of the county which renders the custom of gavelkind peculiarly adapted to that district, *Rep.* iii. 9.—It will not be contended that for the peculiarities of gavelkind which remain, the county should be under a different system of law from the rest of England, *ib.*—As regards abolishing gavelkind, the feelings of the inhabitants should not be put in competition with a certain and considerable public good, *ib.* 11.—Proposal for an Act to disgate the whole county, and declare that all freehold lands within it shall be held in free and common socage, subject to the ordinary rules respecting curtesy, dower, alienation, and descent, *ib.* 12.

See also *Gavelkind.*

*Knighthood.* The heir in chivalry had to pay a large sum of money for the honour of knighthood, which might be imposed upon him against his will, *Rep.* iii. 3.

## L.

*Landlord and Tenant.* Conditions as between landlord and tenant to be excepted from the rule of perpetuities, *Rep.* iii. 43.—Proposition, that with reference to contracts between landlord and tenant, certain propositions shall not affect any rent reserved by a lease, nor any covenant contained in a lease, nor any right of distress or entry for rent or performance of covenants, unless it shall appear by such instrument that such rent or covenant was reserved or inserted for the purpose of evading the law against perpetuities, *ib.* 71.

*Lay Fee.* It is a matter of great importance that all lay fees should be held in free and common socage, *Rep.* iii. 8.

*Leake v. Robinson.* Reference to this case, (2 Meriv. 368, v. p. 389,) as to modelling limitations tending to perpetuity, *Rep.* iii. 40.

*Leases.* Leases defined; in what they are distinct from covenants, *Rep.* iii. 45.

See also *Lessees.* *Lessors.*

*Leases of Church Property.* Questions on the renewal and granting of leases of church property submitted by the commissioners to the Bench of Bishops, *Rep.* iii. App. 12.—Answers thereto by the Archbishop of Canterbury, *ib.* 14; By the Bishop of London, 15; Worcester, 17; Hereford, 18; Peterborough, 20; Lincoln, 22; Carlisle, 23; Gloucester, 24.

*Leases of Copyholds.* Copyhold tenants cannot lease their lands for more than a year without license from their lord, *Rep.* iii. 14.—Improvement is checked by the tenant's power of leasing being limited to a year without license from the lord, *ib.* 16.—Proposal, that copyholders be empowered to grant a lease for twenty-one years without license, *ib.* 19.—Proposition for allowing a copyholder to lease his copyhold for twenty-one years in possession, at rackrent, without license from the lord; such lease to be valid and effectual to the extent of the copyholder's interest, and not to entitle the lord to a fine, *ib.* 68.

*Leases*

**Leases for Lives.** Settlements of leasehold estates for lives, when renewable, are equally mischievous with perpetuities, *Rep.* iii. 34.

**Legal and Equitable Estates.** It was intended by the Legislature that the legal and equitable estate should unite in the party beneficially interested; this has never been extended to copyholds, *Rep.* iii. 6—In whom the legal estate vests on a devise of customary freeholds, *ib.* 21.—See also *Equitable Estates*.

**Legal Fee.** The law does not require alteration or explanation as to covenants where the covenantor is seised of the legal fee, *Rep.* iii. 52.

**Lessees.** Burthen of covenants entered into by the lessee considered, *Rep.* iii. 46—Benefits thereof considered, *ib.* 47—Distinction between covenants by lessees and covenants by owners of the fee, *ib.* 53—Proposition, that the burthen of every covenant hereafter entered into by a lessee shall run with the land, so as to be binding on the assignee of the term, unless the contrary can be collected from the instrument containing the covenant, *ib.* 71—And that the benefit shall run with the reversion unless the contrary can be collected from the instrument containing the covenant, *ib.*

**Lessors.** Burthen of covenants entered into by the lessor considered, *Rep.* iii. 48—Benefits considered, *ib.* 49—Proposition, that the burthen of every covenant hereafter entered into by a lessor, which on his death would be binding on his devisee, shall be binding on the grantee or assignee of the reversion; and all remedies for the breach thereof be maintainable against such person, in the same manner and to the same extent as the devisee would be bound, unless the contrary can be collected from the instrument, *ib.* 71—And that as between the lessor and the person claiming the reversion from, through, or under him, such last-mentioned party shall be deemed the party primarily liable to any proceeding for the breach of any covenant, unless the contrary can be collected from the instrument, *ib.*—Also, that the benefit shall run with the land unless the contrary can be collected from the instrument, *ib.*

**Licences.** Evils of the lord's license determining with his interest in the lands, *Rep.* iii. 16.

It has been decided that when under a condition restraining assignment without license, a licence had once been given, the condition was determined, *Rep.* iii. 49—There seems to be no reason why a covenant or condition not to underlet without license should not be held to run with the land, and be binding from time to time on such persons as might become assigns of the lease with the consent of the landlord, *ib.*—The law that covenants not to underlet without license are lost on license being granted, has been productive of much inconvenience and expense, and not a little litigation, *ib.*—Inconvenience of the rule of law as to license for underletting, to both landlord and tenant, *ib.* 50.

The rule as to license might apply to all covenants, restrictions, and conditions by which the license or consent of the lessor is made requisite for doing any particular act, *Rep.* iii. 50—The law as to license by lessor might be applicable to covenants not to convert pasture to arable lands, *ib.*—Proposal to alter the law by enacting that license or consent shall only authorize the particular act consented to, *ib.*

**Limitations.** Consideration of the question whether limitations tending to perpetuity should be void in toto or modelled, *Rep.* iii. 40—Principles on which the excess tending to perpetuity may, in certain cases, be separated, *ib.*—The rule against perpetuities may be modified in cases of limitations depending the event of unborn children attaining an age greater than twenty-one, *ib.* 41—The rule may also be modified in cases of limitations to take effect on two or more events, some of which are too remote, *ib.*—The proposal that the period of limitation with respect to land should be materially shortened has met with general approbation, *ib.* 62.

See also *Perpetuities*. *Ulterior Limitations*.

**Limited Interests.** Insurmountable difficulties in the way of extending a provision for distinguishing freehold from copyhold land to persons having limited interests, *Rep.* iii. 20.

**Lincoln, Bishop of.** Answers by the Bishop of Lincoln to questions circulated by the commissioners relative to church property, showing cases relative to the enfranchisement of copyholds; giving his opinion as to renewal and granting powers for church leases, and objection to a statute of limitations, *Rep.* iii. App. 22.

**Litigation.** Manner in which parties are forced into litigation through ignorance of tenure by which a particular piece of land is held, by mistakes being made in settlements, purchases, and wills, and the intention of parties being defeated, *Rep.* iii. 6—Litigation occasioned by the same words being applied in legal instruments to lands held by different tenures, *ib.* 7—Litigation is frequently caused by the variety of customs in manors, *ib.* 15—Vexatious and expensive lawsuits frequently arise from the claim to heriots, *ib.* 19—Causes of litigation being prolonged and multiplied in church cases, *ib.* 59.

**Livery of Seisin.** Livery of seisin operated on the possession, and was transmitted at once to all the particular estates, and to the ultimate remainder, *Rep.* iii. 23.

**Lives.** Perpetuities attempted to be created by introducing a great number of lives and accumulation, *Rep.* iii. 32—Lives embraced in the period of perpetuity as the law now stands, *ib.* 37—Consideration whether the lives can be restricted to a given number, *ib.*—Also whether perpetuities could be restrained to lives of parties taking interests, *ib.* 38—Modes in which the rule might be restricted, *ib.*

**London, Bishop of.** Answers of the Bishop of London to questions circulated by the commissioners relative to church property, doubting the benefit of enfranchising copyholds; giving opinion on the powers of renewing and granting ecclesiastical leases, and on a statute of limitation for the Church, *Rep.* iii. *App.* 15, 16.

**Long Usage.** Difficulty of proving the legal origin of long usage in cases of claims of exemption, from tithes, *Rep.* iii. 60.

**Lord's Rights.** In ancient demesne lands the rents, fines, and services due to the lord are certain, *Rep.* iii. 13—The benefit accruing to the lord from his rights over the copyhold tenement, bears no proportion to the injury they occasion the tenant, *ib.* 16.

**Loss or Destruction of Deeds.** Proposition, that an action on the case shall lie at the suit of any person having an interest in or under any deed or instrument, against any person having the custody, for any injury which he may sustain from its being lost or destroyed under circumstances of fraud or wilful neglect, *Rep.* iii. 73.

#### M.

**Macher v. The Foundling Hospital.** Reference to this case (1 V. & B. 191), and Lord Eldon's opinion on the effect of the law as to lessor's license on other covenants than that against alienation, *Rep.* iii. 50, *note.*

**Manifold Writing.** Description of the manifold mode of writing, and its advantages, applied to registration, shown, *Rep.* iii. *App.* 51.

**Manor Courts.** Proposal, that courts for surrenders and admissions be held although no copyholders be present, *Rep.* iii. 20.

**Maps.** Suggestions for an appropriate all-comprehensive map, in the event of a registry, *Rep.* iii. *App.* 47.

**Merger.** Proposal, that remedies for rent and on covenants shall not be lost by merger of the immediate reversion, *Rep.* iii. 49—Proposition, that where a term has been created out of an estate not being a fee simple absolute, and the immediate reversion shall hereafter become merged, such merger shall not destroy any rent or covenant annexed to the merged estate, but shall be transferred to, and maintained by, the owner of the estate on which such merger shall have taken place, *ib.* 72.

**Minerals.** In copyhold lands the minerals belong to the lord, *Rep.* iii. 14—Much litigation has arisen, and is likely to arise, touching the right of the lord to dig for minerals according to the customs of different manors, *ib.* 15.—See also *Timber.*

**Minorities.** A relaxation of the rule against perpetuities may be admitted in cases of trusts to be executed during successive minorities, *Rep.* iii. 42.

**Modes of Transfer.** Inconvenient rules of common law as to the mode of transferring estates and interests in real property, *Rep.* iii. 5.

**Modusses.** Modusses defined; their origin; they ought to be respected; manner in which they may now be set aside, particularly on the ground of rankness, *Rep.* iii. 60, 61—Effects of a suit relating to a modus; the result is often unjust, *ib.* 61—Reference to the law reports, giving list of cases where modusses have been set aside, *ib.*—Disapproval of the plan suggested by several of the bishops for the appointment of a commission to determine existing modusses, *ib.*

**Mortgages.** See *Collusive Mortgages.*

**Mortgagor and Mortgagee.** The mortgagee cannot be compelled to produce deeds, or allow their inspection, till his debt is paid; there is no reason for continuing this privilege, *Rep.* iii. 57.

#### N.

**Name and Arms.** Shifting uses dependent on using name and arms; the rules as to perpetuity in this case are well known, *Rep.* iii. 35—Case of devise to A. B. his heirs and assigns, on condition that he and they shall take and continue the name and arms of C. D.; the question upon the right of entry in this case has not been determined, *ib.* 36—Sometimes a condition of this kind has been considered void on account of the absurd consequences to which it would lead, *ib.*—A devise of this description is not a determinable or conditional fee, *ib.*—See also *Conditions.*

Norfolk.

*Norfolk, Duke of.* Substance of the case of the Earl of Arundel, Duke of Norfolk, in the year 1681, as regards perpetuity, *Rep.* iii. 31.

*Norfolk, Suffolk, and Esser.* The inconvenience from confusion of boundary between freehold and copyhold lands, is particularly felt in these counties, *Rep.* iii. 15.

*Northumberland.* In the south-western parts of this county the tenure called customary freehold prevails, *Rep.* iii. 20.

*Nottingham, Lord Chancellor.* Observation by Lord Chancellor Nottingham on the doctrine of double possibility, *Rep.* iii. 29.

*"Nullum tempus occurrit Ecclesiæ."* This rule has worked prejudice and vexation to the laity, and has not proportionably enriched the church, *Rep.* iii. 58.

*"Nullum tempus occurrit Regi."* Until the 9 Geo. 1, the rule "*nullum tempus occurrit Regi*" prevailed, but no public loss has been sustained from permitting the rights of the Crown to be barred by an adverse enjoyment of sixty years, *Rep.* iii. 60.

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*Open Spaces.* Consideration of the law as to covenant by the owner of a particular close, that it shall never be built upon, but always remain an open space, *Rep.* iii. 53.

*Oral Testimony.* Difficulties as regards oral testimony in church cases, *Rep.* iii. 59.

*Osbaldeston & Murray, Messrs.* Communication from Messrs. Osbaldeston & Murray on the law of escheat in cases of illegitimate trustees dying intestate, *Rep.* iii. App. 10.

*Outstanding Estates.* Special covenants to get in outstanding estates considered, *Rep.* iii. 51.

*Oversands (Lancashire).* In a part of Lancashire, called Oversands, the tenure called customary freehold prevails, *Rep.* iii. 20.

## P.

*Partington, T.* Answers by T. Partington to the questions circulated by the commissioners on the subject of tenures, inserted in the Appendix to the First Report, p. 87; *Rep.* iii. App. 6-9.

*Partition.* Equity, as regards the production of deeds, has always prevailed in favour of coparceners, and in cases of partition under decrees, and it should prevail where the ownership of lands held under one title has become divided, *Rep.* iii. 57.

## PERPETUITIES:

1. *Their Origin; History of the Attempts made to create them; Summary of the Law on the subject.*

2. *Proposed Modifications of the Law.*

1. *Their Origin; History of the Attempts made to create them; Summary of the Law on the subject:*

Remarks pointing out the origin and recommending modifications as to the boundaries of perpetuities, *Rep.* iii. 29.

Since the period of Sir Francis Bacon, there has been a continual struggle between ingenious lawyers, on the one hand, to lengthen the periods of perpetuity, and courts of justice, on the other, to restrain them within their proper limits, *Rep.* iii. 30.—Manner in which the judges became jealous of any limitation tending to a perpetuity, *ib.*—History of modern attempts to create perpetuities, *ib.*—Attempt at creating a perpetuity, by making successive estates for life; decision of the courts thereon, *ib.*—Attempt to create a perpetuity, by making estates for years determinable with lives; decisions of the court thereon, *ib.*—Conclusion that the branch of the law as to perpetuities has been created by the courts, and has gradually been extended, *ib.* 34.

Summary of the law regarding perpetuities; difficulty and importance of the subject; the restrictions imposed by the courts are both beneficial and reasonable in their general extent, *Rep.* iii. 37.—Rule as to the period of perpetuity, exclusive of lives, *ib.* 39, 40.—Doubts whether covenants or trusts to preserve land in a particular state are not open to the objection of tending to a perpetuity, *ib.* 54.

2. *Proposed Modifications of the Law:*

Proposals for improving the law; first, as to the limits of the rule of perpetuity, *Rep.* iii. 37.—Secondly, as to the period of perpetuity, exclusive of lives, *ib.* 39, 40.—Proposal to allow the rule as to perpetuities to be modified in certain cases, *ib.* 41.—Proposal as to the rule of perpetuities, with regard to executory or future limitations to take effect in possession after estates tail, *ib.*



**PERPETUITIES—2. Proposed Modifications of the Law—continued.**

Proposition, regulating the period during which the vesting of a future estate or interest in any hereditament, right, profit, or easement, may be suspended, *Rep.* iii. 69 —Also for regulating the time of creation of estates arising by virtue of wills or powers, *ib.* —Proposition that a remainder be not deemed a future estate or interest within certain limits, *ib.* —And also proposition for making void contingent remainders, or other future estates or interests, the vesting of which shall be suspended during a life or lives arbitrarily taken for the purpose of such suspension, *ib.*

Proposition, that a contingent remainder, or other future estate or interest, which, if limited to take effect out of an estate in fee simple, would be void under the rule against perpetuities, shall be void when limited to take effect out of any less estate, *Rep.* iii. 69 —Also, that a power so made that it may be exercised at any time beyond the period allowed for suspending the vesting of a future estate or interest, and not tantamount to the absolute ownership, shall (except as after provided) be void, *ib.* —And that a future estate or interest, limited to take effect in possession, after the determination of any other estate or estates created at the same time, determinable upon a life or lives *in esse*, shall not be void if it vest at or before the dropping of such life, or of the last of such lives, *ib.*

Proposition, that a future estate or interest limited to take effect after the determination of any estate tail, or in defeasance of any estate tail (other than a future interest arising under the exercise of a power having precedence to the estate tail), shall not be void if it vest at any time during the continuance of any such estate tail, *Rep.* iii. 70 —Also, that a future estate or interest, limited to any person or persons *in esse* at the creation thereof, shall not be void if it vest during the life of such person or persons, *ib.* —And that a future estate or interest, limited to a class of persons described as children of some person or persons *in esse* at the creation thereof, and to vest in some event not connected with the age of such children, shall not be void if the event happen during the life of such parent or one of such parents, or before the birth of any such child, being a posthumous child, *ib.*

Proposition, that a future estate or interest, limited to vest on the happening of any one of several events, upon some or one of which only the same might have been lawfully limited to vest, shall be deemed to be limited to vest upon such last-mentioned event, or upon any of such last-mentioned events only, *Rep.* iii. 70 —Also, that where a future estate or interest shall be limited to vest on the event of a person not born, nor *en ventre sa mère*, at the creation of such future estate or interest, attaining or not attaining an age greater than twenty-one, the settlor or testator shall be deemed to intend the age of twenty-one, *ib.*

Proposition, that where an estate or interest shall be made determinable, either by original limitation thereof, or by virtue of any proviso, condition, or agreement, upon the event of a person not born, nor *en ventre sa mère*, at the creation of such future estate or interest, attaining or not attaining an age greater than twenty-one, the settlor or testator shall be deemed to intend the age of twenty-one, *Rep.* iii. 70 —Also, that an estate or interest limited or arising under a trust during the minorities of any persons being tenants in tail or in fee, shall not be void by reason of the trust not being expressly confined to the minorities of persons taking by purchase; but shall cease so soon as such person, or his heir, shall become adult. This proposition not to render valid any trust for accumulation beyond the legal limits, *ib.* —Proposition regulating the period during which an estate or interest in any hereditament, profit, or easement (other than an estate or interest in tail) may be made determinable or become absolute, *ib.* 71.

See also Bacon, Sir Francis. *Cesser of Terms.* Coke, Sir Edward. *Common Law.* Consent. *De Donis Conditionalibus*, Statute of. Easements. Grant, Sir William. *Landlord and Tenant.* Limitations. Lives. Minorities. Powers. Recoveries. Revocation, Powers of. Rights of Entry. Shifting Uses. Springing and Shifting Uses. Ulterior Limitations.

**Personal Covenants.** See *Covenants.*

**Persons.** Proposition, that the word persons in the propositions shall include corporations aggregate or sole, *Rep.* iii. 67.

**Peterborough, Bishop of.** Answers of the Bishop of Peterborough to questions circulated by the commissioners relative to church property, stating the difficulty of enfranchising ecclesiastical copyholds; giving opinion upon leasing powers, and objecting to a statute of limitation for the church, *Rep.* iii. App. 18–21.

**Planting Trees.** Covenants to plant trees are made binding by the assigns being named, *Rep.* iii. 46.

**Possibilities.** Proposition, that an estate hereafter created shall not be void on account of its being made to depend on a possibility upon a possibility, *Rep.* iii. 69.

See also Coke, Sir Edward. *Double Possibility.*

**Post Office.** The Post-office should be made the mode of communication for documents, *Rep.* iii. App. 56.

*Powers.*

**Powers.** Powers which are the subject of doubts as regards the doctrine of perpetuity, *Rep.* iii. 34—Powers form one of the most difficult subjects of consideration with reference to the rule against perpetuities, *ib.* 42—Powers which are in fact trusts must be judged of by the rules applicable to trusts, *ib.*—Suggestions with regard to the rule against perpetuity in cases of powers, *ib.*

Proposition, regulating the exercise of powers limited to be exercised at several or any of several times, or on the happening of several or any of several specified events, &c. *Rep.* iii. 70—Proposition, that a power without restriction as to the time of its being exercised shall not be void, if the same shall be limited to be exercised by or with the consent of the person or persons for the time being entitled to the land; but any such person or persons being tenant or tenants in fee or in tail, may extinguish such power by deed or by will, *ib.*

Proposition, that a power over land, subject to the limitations of a settlement made by the instrument creating the power, or by any prior instrument, and not limited to be exercised with the consent of the person entitled to the land, may be exercised from time to time until some adult person shall become entitled in possession to an estate in fee or in tail under the settlement, and shall thereupon cease, *Rep.* iii. 71—And that a power, the exercise of which may be enforced in equity in favour of persons whose estates or interests to be taken under the exercise of such power shall not be void under the foregoing propositions, shall not be void, *ib.*

**Prescription.** The evils with regard to legal proceedings in relation to ecclesiastical property admit of no remedy but fixing in this country a period of prescription for the church, *Rep.* iii. 59—Prescription must be governed by peculiar rules as to property *extra commercium*, held by a succession of tenants for life, *ib.*—It is believed that there is no other country in Europe, Catholic or Protestant, in which there is not a period fixed for barring the claims of ecclesiastics, *ib.* 60.

Different proposals for the period of prescription examined, *Rep.* iii. 62—Period compounded of sixty years, two incumbencies, and three years of a third incumbency, proposed as to exemptions from tithes, and as to moduses, compositions real, and glebe lands, *ib.*—Why a succession of incumbencies is necessary in a proposition for church prescription, *ib.*—See also *Henry VIII.*

**Presumptions.** The doctrine of presumptions as regards the church explained, *Rep.* iii. 59—Presumptions of fact are held to be within the province of a jury, *ib.*

**Private Acts.** Private Acts of Parliament have been obtained in many cases where the property would bear the expense, but these should not be encouraged where common assurances would suffice, *Rep.* iii. 54, 55.

**Production of Deeds.** Parties interested ought to be able to enforce the production of deeds, *Rep.* iii. 56—Stipulations as to the production of title-deeds, inserted in private contracts, often lead to litigation, *ib.*—In cases of estates sold in lots, the party purchasing the more valuable portion has the custody of the deeds, and covenants for their production to other purchasers, *ib.* 57—There must have been a clear equity to compel feoffees to uses, and their heirs, to produce deeds for the benefit of those interested, *ib.*

Proposal, that every person showing a right not inconsistent with that of the party holding a deed, should compel its production, *Rep.* iii. 57—Proposition for allowing application to a judge for production of deeds, and giving powers to the judge to order the production, *ib.* 57, 72—Also for compelling the production of deeds by means of a suit in equity or otherwise, *ib.* 58, 72—An action on the case may be given for injury or damage sustained from loss or destruction under circumstances of fraud or gross neglect, *ib.* 58.

See also *Conditions of Sale. Copies of Deeds. Equity. Unmarketable Titles.*

**Purchasers.** Proposition, that purchasers taking assignments from assignees, sheriff, executors, or administrators, should become liable to covenants not to assign, &c. as well as all others in the lease, *Rep.* iii. 51.

#### Q.

**Queen Ann's Bounty.** Proposition, that any gross sum to be given for enfranchisement of ecclesiastical copyholds, or the extinguishment of rents, shall be paid to the governors of Queen Ann's Bounty, in trust, to be laid out in land, &c. *Rep.* iii. 67.

**Quia Emptores.** Statute of. The ancient statute *Quia Emptores*, 18 Edw. 1, put an end to subinfeudation, and enacted that land should be held of the superior lord, *Rep.* iii. 4.

**Quiet Enjoyment.** The covenant for quiet enjoyment is the only express covenant entered into by lessors which can be considered universal; objects of this covenant, *Rep.* iii. 48.

**Quit Rents.** From the release of quit rents, or the neglect to require payment of them, a difficulty is caused in ascertaining titles on escheat, *Rep.* iii. 4.

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*Real Covenants.* See *Covenants*.

*Recoveries.* Common recoveries introduced to prevent perpetual entails, allowed by the statute *de donis*; *Rep.* iii. 29—The present laws against perpetuities originated subsequently to the allowance of recoveries, in order to provide against attempts, by covenants or provisions in settlements, to restrain tenants in tail from suffering recoveries or levying fines, *Rep.* iii. 30.—See also *Fines and Recoveries*.

*Redendum Clause.* Law with regard to actions of covenant on the redendum clause, *Rep.* iii. 47.

*Registration of Deeds.* See *General Register of Deeds*.

*Re-grants of Copyholds.* Proposition that no copyhold tenement which shall hereafter be surrendered to the lord, or which he shall acquire by escheat, shall afterwards be granted by copy of court roll, *Rep.* iii. 18. 67.

*Relatives.* Escheats sometimes, though rarely, occur from there being no known relation of the person last seised, of the blood of the family through whom the land descended, *Rep.* iii. 4.

*Religious Houses.* If a party succeeds, after litigation, in proving that his land anciently belonged to a religious house, and is discharged from tithes, the costs awarded him are an insufficient indemnity for the expenses incurred, *Rep.* iii. 60.

*Remainder-men.* Actions of covenant by remainder-men, as assignees of the reversion, *Rep.* iii. 47.

*Remainders.* Definition of a remainder, *Rep.* iii. 23—Uninterrupted succession of estates properly constitutes remainders, *ib.*—Vested remainders or reversions may be conveyed, devised, &c. as estates in possession, *ib.*

See also *Coke*, Sir *Edward*. *Contingent Remainders.* *Fearne*, Mr.

*Rentcharges.* Consideration of the subject of covenants to pay rentcharges issuing out of land, *Rep.* iii. 52.

*Rents.* Common-law rents seem placed on the same footing as terms of years, there being no limit to their commencement, *Rep.* iii. 36—Sometimes a rent is created with powers of distress and entry, to arise on the taking place of any alteration in the circumstances of the land, *ib.* 54.

Proposition for the extinguishment of rents reserved, in consideration of enfranchisement, and for giving powers to parties to give or accept release of such rent, *Rep.* iii. 66—Also for apportioning such reserved rents among different parts of the tenement out of which the same shall be reserved, and for extinguishing such apportioned parts, *ib.*—And that every rent reserved to the lord in consideration of enfranchisement shall become parcel of the manor, *ib.*—See also *Quit Rents*.

*Repair of Buildings.* Covenants to keep existing buildings and fences in repair run with the land, *Rep.* iii. 46.

*Reversions.* Nature of a reversion; difference between a remainder and reversion, *Rep.* iii. 23—The remedy for the recovery of land upon the reverter was not by entry for a condition broken, but by a formedon in the reverter, *ib.* 36—In what cases the burthen of a lessor's covenant runs with the reversion; proposed alteration, *ib.* 48—Lessor's covenants not relating to the land ought to be made to run so far as to bind the assignee or grantee of the reversion to the extent of the value of the reversion; reasons for not going beyond the value of the reversion, *ib.*—It should be provided that, as between grantor or lessor, and those who take the reversion under him, the latter should be primarily liable in the absence of any declaration to the contrary, *ib.* 49.

*Revocation, Powers of.* Attempts at creating perpetuities by powers of revocation authorizing the conversion of estates tail into life estates; this was held void, *Rep.* iii. 30—Doubts as regards perpetuity of use to a party holding in fee, with power of revocation to another party and his heirs, *ib.* 34—Doubts as regards perpetuity of use to A. in fee, with power of revocation to trustees, with consent of person entitled, *ib.*

*Rights of Entry.* Rights of entry upon conditions broken seem not to be confined within the rule of perpetuities, *Rep.* iii. 36—There are some rights of entry under conditions, to which the rule of perpetuities should not be applied; as for securing rents, *ib.* 37.

*Roach v. Wadham.* Reference to this case (6 East, 289) as to certain covenants running with the land, *Rep.* iii. 53, note\*.

*Roads.* Consideration of the law as to covenants to repair roads over land, *Rep.* iii. 52.

S.

*Shifting Uses.* The statute 27 Hen. 8, converted shifting uses into legal estates, *Rep.* iii. 28—In cases where shifting uses are adopted as a substitute for the right of entry, they appear to be directly within the rule against perpetuities, *ib.* 37.

See also *Name and Arms.*    *Springing and Shifting Uses.*    *Statute of Uses.*

*Socage.* Formerly those who devoted themselves to the occupation of agriculture were tenants in socage, *Rep.* iii. 6—Free and common socage is the tenure by which the great bulk of real property in England is now held, *ib.* 7—Advantages of socage tenure, as enjoyed by the tenant, *ib.* 8.

See also *Allodial Lands.*    *Dominium Utile.*    *Escheat.*    *Fines and Recoveries.*  
*Lay Fee.*

*Specialties.* A covenant is an obligation in the nature of a specialty, *Rep.* iii. 45—How far covenants for the benefit of persons uninterested in the land may remain binding as personal obligations and of the nature of specialties, except where contrary to public policy; how far they ought to be declared legal, *ib.* 56.

*Specific Performance.* Doubts whether the specific performance of contracts under seal as to real property was known to the common law, *Rep.* iii. 44—Relief afforded by equity in enforcing specific performance of covenants, *ib.* 45.

*Springing and Shifting Uses.* The law as to springing and shifting uses pointed out, *Rep.* iii. 27—Proposal, that estates to arise by way of springing or shifting use, and executory devise, should be made transferable at law, to the same extent as contingent remainders, *ib.* 28—Mode adopted for creating perpetuities by constructing springing or shifting uses, executory devises, and executory trusts, *ib.* 31—Executory devises, or springing uses, which tend to perpetuity, cannot be partially good, *ib.* 35.

See also *Shifting Uses.*    *Wills.*

*Statute of Limitations for the Church.* A statute of limitations for the Church would be beneficial, *Rep.* iii. 58—Subjects to be considered in framing a statute of limitations for the Church, *ib.* 60—Questions on the subject of a statute of limitations for the Church, submitted by the commissioners to the Bench of Bishops, *Rep.* iii. App. 13—Answers thereto by the *Archbishop of Canterbury*, *ib.* 15;—By the *Bishop of London*, 16; *Worcester*, 17; *Hereford*, 18; *Peterborough*, 20; *Lincoln*, 22; *Carlisle*, 23; *Gloucester*, 25.

*Statute of Uses.* Some common-law rules have been evaded by a subtle application of the Statute of Uses, *Rep.* iii. 5—Nature of estate that may be allowed to take effect as a springing or shifting use under the Statute of Uses, but not as a remainder, *ib.* 23.

*Statute of Wills.* The Statute of Wills was held not to extend to copyholds, and they continued to be devised according to the custom, *Rep.* iii. 21—Nature of estate that may take effect as an executory devise under the Statute of Wills, *ib.* 23—An innovation on the common law was made, under the Statute of Wills, by the introduction of executory devises, which closely resembled springing or shifting uses, *ib.* 28.

*Stephenson, James.* Communication from James Stephenson, lately deputy-register of the West Riding of Yorkshire, with suggestions on the subject of general registration, and proposing a form of index, *Rep.* iii. App. 32–36.

*Stewards' Fees.* Manner in which stewards' fees are charged, and become a heavy burthen on copyhold property, *Rep.* iii. 16.

*Subinfeudation.* See *Quia Emptores*, Statute of.

*Subletting Act (Ireland.)* Provisions in the Act 7 Geo. 4, c. 29, as to covenants prohibiting, assigning, or subletting without license, *Rep.* iii. 50.

*Surrender and Admittance.* Land held in ancient demesne is said to pass by surrender and admittance (2 Blac. Com. and Com. Dig., title Ancient Demesne), but this appears to be inaccurate, *Rep.* iii. 13—Tenants cannot alien except by surrendering to the lord, and the alienee or devisee has no legal title till he has admitted them, *ib.* 14—A real superiority now belongs to copyholds from surrenders and admissions showing the title, but the same advantages will be enjoyed by all land if a general register be established, *ib.* 16—Surrenders to the uses of wills; nature and effect of this mode of devising copyholds, *ib.* 21.

Proposition for the surrender of copyholds by deed, attested by two witnesses, and delivered to the lord or steward, who shall give an acknowledgment, and enter the deed on the court rolls, *Rep.* iii. 68—Proposition, that the lord or steward of a manor, receiving any deed of surrender, shall be bound to give to the person delivering the same, notice, in writing, of any prior surrender of the same tenement, which he shall not have entered on the court rolls, *ib.*

*Sussex.* In Sussex, and in other parts of England, the boundaries of copyholds may be traced by the entire absence of trees on one side of a line, and their luxuriant growth on the other, *Rep.* iii. 15.

## T.

## TENURES :

1. *Origin of Tenures ; their Variety ; Enumeration of those now subsisting.*
2. *The Expediency of Abolishing them considered.*
3. *Answers to Queries circulated by the Commissioners.*

1. *Origin of Tenures ; their Variety ; Enumeration of those now subsisting :*

The subject of tenures generally considered, *Rep.* iii. 3 *et seq.*—Tenure was introduced for the military defence of the kingdom, and has long survived its principal object, *ib.* 4—Formerly the knights who were to defend the kingdom, in recompense for the estates granted to them, held by military tenure, *ib.* 6.

The variety of tenures affords one of many instances in which the laws have been retained when the circumstances in which they originated are entirely altered, *Rep.* iii. 6—Formerly the serfs, or villeins, who cultivated patches of the waste of the manor, held at the will of the lord, *ib.*—At present the tenure of land has no reference to the profession or rank of the tenant, or the purpose to which the land is to be applied, *ib.*—Enumeration of tenures now subsisting, *ib.* 7.

2. *The Expediency of Abolishing them considered :*

The consequences of tenure so deeply and extensively pervade the whole system of the law of real property, that the abolition of it would be an innovation too dangerous to be prudently hazarded, *Rep.* iii. 4—Some few inconveniences arising from the principle of tenure still remain, but may be remedied by specific enactments, *ib.*—If tenure were abolished, positive enactment must provide for all the rules deduced from tenure which it is intended to preserve ; some might escape attention, *ib.*

The variety of tenures still subsisting is an unqualified evil ; it serves no purpose and has no object ; whatever evils arise from it are wholly uncompensated, *Rep.* iii. 5, 6—The variety of tenures affords no facilities either for varying the mode in which land is to be occupied, or enabling the owner to regulate the succession to it, or to apportion different estates and interests in it, according to the exigencies of society, *ib.* 6.

Difficulty of adapting measures for the improvement of the law of real property to the various existing tenures, *Rep.* iii. 6—Inconvenience of having different systems of law for different portions of the soil of the same country, *ib.*—Every thing should be done which is consistent with the rights of property, to reduce all to one simple tenure, stripped of local customs, and attended by the same rules as to enjoyment and transmission, *ib.*

Propositions of the commissioners relative to tenures, *Rep.* iii. 65–68.

3. *Answers to Queries circulated by the Commissioners :*

Answers to the questions circulated by the Commissioners on the subject of tenures, which are inserted in the Appendix to the First Report, p. 87, *Rep.* iii. App. 6.

See also *Abolition of Tenures.* *Acts of Parliament.* *Ancient Demesnes.* *Borough English.* *Burthens and Restrictions of Tenures.* *Chivalry, Tenure in.* *Codification.* *Copyholds.* *Customary Estates.* *Customs.* *Divine Service, Tenure by.* *Domainum Directum.* *Expenses of Transfer.* *Frankalmoign.* *Gavelkind.* *Grand Serjeanty.* *Litigation.* *Socage.*

*Terms.* See *Cesser of Terms.*

*Terms of Years.* Provisions to be made for cases of terms of years, so as to subject the Crown, becoming entitled to a term, to any subsisting trusts or equity of redemption, and so as also to give the Crown the benefit of the trusts of a term, on failure of personal representatives or kindred of the person beneficially interested, *Rep.* iii. 5—At common law, partial interests cannot be created in a term by deed ; the law is different in equity, *ib.* 28.

Partial interests in terms of years may be legally devised by will, *Rep.* iii. 28—Doubts as regards perpetuity ; use to *A. B.* for 1,000 years, remainder to *C. D.* in fee, with power to *C. D.* and his heirs to revoke the term, *ib.* 34—Use in a marriage settlement to trustees for 1,000 years preceding all other limitations, but for a purpose connected with them ; question as regards perpetuity, *ib.* 35—As to terms of years to commence in futuro, there was no limit by the common law to their commencement, *ib.* 36.

Proposition, that a term of years in land, which shall have escheated or vested in the lord for want of heirs, shall, so far as the term shall be attendant on the inheritance, be held in trust for the lord, *Rep.* iii. 65—And that a term of years not attendant on the inheritance to which a person dying intestate, and without kindred, shall be entitled in equity, shall be held by the trustee in trust for the Crown, but subject to the interest of any wife, and to any other trust subsisting therein, *ib.*

*Terra*

**Terræ Regis.** The law books all agree that ancient demesne exists in those manors, and in those only, which belonged to the Crown in the reigns of Edward the Confessor and William the Conqueror, and in Domesday Book are denominated *Terræ Regis*, *Rep.* iii. 12.

**Testamentary Power.** Since the Statute of Wills, 32 Hen. 8, a direct testamentary power has been enjoyed by the owners of all freehold lands, *Rep.* iii. 9—The direct testamentary power always enjoyed by the owner of gavelkind land was, before the Statute of Wills, an important distinction, *ib.*

**Thelluson's Case.** Particulars of this case as regards a perpetuity, *Rep.* iii. 32.

**Timber.** In ancient demesne manors the timber and minerals belong to the tenant, *Rep.* iii. 13—Copyhold tenants can only cut such timber growing on their land as may be sufficient for fuel and repairs, *ib.* 14—In consequence of the law with respect to timber, no young tree is allowed to stand on copyhold land, *ib.* 15—Interference with the rights of lord and tenant as to timber and minerals, considered impracticable, *ib.* 19.

See also *Minerals*.

**Tithes.** The rule "*nulum tempus occurrit ecclesiæ*" has brought a reproach upon tithes from which they should be rescued, *Rep.* iii. 58—Where tithes are claimed either by a lay impropriator or by a corporation aggregate, whether temporal or spiritual, the enactments recommended respecting land should be extended to them, *ib.* 59—As the law stands, non-payment of tithes for any period, however long, is no ground of exemption, *ib.* 60.

There is no objection to enacting, that where there has been non-payment of tithes, as of right, for a certain number of years, and during a certain number of incumbencies, such non-payment alone shall be sufficient to establish the exemption, *Rep.* iii. 60—Where tithes have been paid for a certain time, no exemption or modus should be allowed to be set up, *ib.* 63.—See also *Customary Payments*. *Exemption from Tithes*.

**Titles.** Titles by escheat are hardly ever reckoned secure, *Rep.* iii. 4—Effect, as regards escheats, from occasional unity of title to the manor or seignory, and the lands which are held of it, *ib.*—According to the feudal system, a lord who had once granted land was bound to support the title to it, or to give the tenant other land of equal value in its place, *ib.* 5—Two titles have to be examined, and two sets of assurances to be executed, in cases where the same field or the site of the same house is partly copyhold and partly freehold, *ib.* 6, 7—The title to real property is often affected by covenants, *ib.* 44.

See also *Double Titles*. *Unmarketable Titles*.

**Tortious Conveyances.** Contingent remainders were liable to be destroyed by the tortious conveyance of the owner of the particular estate, because it destroyed the estate, *Rep.* iii. 24—In 1783 a Bill was prepared by the late Mr. Shadwell for preserving contingent remainders against the tortious acts of the tenant for life, but it was never passed, *ib.* 25.

**Townsend, J. S.** Communication from J. S. Townsend, Master in Chancery in Ireland, remarking on the objects and effects of a registry, and in answer to questions inserted in the appendix to the Second Report, p. 38, in favour of an open register by memorial, *Rep.* iii. App. 26–32.

**Trades.** The rule of law as to a lessor's license might be applicable to covenants not to carry on particular trades, *Rep.* iii. 50.

**Transfer of Contingent Remainders.** A contingent remainder is not transferable at law, except by fine; and the mode in which a fine operates as a transfer, is scarcely well settled, *Rep.* iii. 26—Supposed reasons for the above rule, *ib.* 26, 27—Proposal, that contingent remainders, and other contingent interests, should be transferable at law, but not unless a general register were established, *ib.* 27.

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*County and Hundred Courts.* Before the Conquest, suits of every description were determined by the county and hundred courts, and courts of towns and districts, *Rep. iv. 42, 43*—Formerly the bishops sat with the earl in the county court, and decided testamentary as well as other causes, *ib. 43*—The spiritual courts were separated from the county court by a charter of King William the First; directions in that charter, *ib.*

*Courts of Equity.* When there are circumstances to give jurisdiction to equity, a will may be established by a decree, *Rep. iv. 36*—An heir cannot obtain a final decision on the validity of a will unless equity has jurisdiction, *ib.*—A similar jurisdiction is exercised by equity with respect to deeds as wills, *ib. 37*—The existing courts of equity are able to dispose of all the testamentary business; public utility will be better served by using the existing tribunals than by creating a new one, *ib. 65.*

Proposition, that courts of equity shall have jurisdiction over wills of personalty, exclusively of courts of law, *Rep. iv. 66*—Suits should be entertained for establishing or carrying into execution a will, or for declaring it void, *ib.*—When the right to administration is disputed, another suit is usually instituted at the same time in equity for the protection of the assets, *ib. 71*—Proposition giving courts of equity jurisdiction to determine the validity of wills of personal property, *ib. 82.*

See also *Chancery, Court of. Decrees in Equity. Delivery of Wills. Fraud. Masters in Chancery. Perpetuating Testimony. Petition.*

#### COURTS OF PROBATE:

1. *Number of Courts of Probate in England and Wales; their Powers.*
2. *Evils arising from their defective Constitution; their Abolition proposed.*

##### 1. *Number of Courts of Probate in England and Wales; their Powers:*

A will of personal property must be proved in the Court of Probate, whether disputed or not, *Rep. iv. 38*—Particulars respecting the variety and nature of the courts of probate, and circumstances upon which their different jurisdictions depend, *ib. 41*—

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1. *Number of Courts of Probate, &c.*—continued.

Number of courts of probate in England and Wales; uncertainty respecting them, *Rep. iv. 42*—Table showing the various courts of probate (exclusive of the High Court of Delegates), as they appear by the returns printed by orders of the House of Commons of 16 April 1829, and 16 March 1830, *Rep. iv. App. Gale 58 (599)*.

2. *Evils arising from their defective Constitution; their Abolition proposed.*

The evils of the courts of probate are generally acknowledged, *Rep. iv. 55*—The present jurisdiction might be transferred to one of the present courts, or to a new court, but there would still be evils, *ib.*—The question as to the proof of wills is connected with that of the expediency of giving to the court of probate a concurrent jurisdiction with equity in the administration of assets, *ib. 59*.

If the whole testamentary jurisdiction were confined to a court of probate there would still be the danger of conflicting decisions, because the points which arise upon wills also arise upon deeds and other instruments, *Rep. iv. 65*—If all the objections were removed the new court would be a new court of equity, *ib.*—Proposition abolishing the present courts of probate, *ib. 81*—Evils arising from the number and variety of courts of probate, *Rep. iv. App. Sir H. Nicolas 103*.

“*Credible.*” Questions which have arisen upon the word “credible” in the Statute of Frauds, *Rep. iv. 19*—Proposition to adopt the expression “credible” with the provisions of the 25 Geo. 2, c. 6, as to gifts, *ib. 20*.

*Crown, The.* Instances of the jurisdiction of proving wills being granted by the Crown since the Conquest, *Rep. iv. 51*—Instances of the Crown interfering in testamentary matters, *Rep. iv. App. Gale 30 (316)*—State of the law as regards royal prerogative, administration, and distribution, *ib. 37 (391–396)*.

*Customary Estates.* It is doubtful whether customary freeholds are within the 55 Geo. 3, c. 192; some are not devisable at law, *Rep. iv. 11*—Forms of law required to be attended to in the execution of wills for passing customary freeholds, *ib. 13*—Equitable interests in customary freeholds, which must be devised according to the Statute of Frauds, are not within the jurisdiction of the Court of Probate, *ib. 41*.

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*Customs.* Doubts are entertained whether a custom against a surrender to the use of a will would be valid, *Rep. iv. 10*.—See also *Local Customs*.

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*Danish Jurisdictions.* Danish custom of joint lay and ecclesiastical jurisdiction, *Rep. iv. App. Gale 19 (131)*.—See also *Anglo-Saxon, Danish, and Norman Laws*.

*Deans and Chapters, and Deans' Peculiars.* Jurisdiction of the peculiars of deans and chapters, and deans; appeal to the archbishop, *Rep. iv. 49 and notes*.

*Death of Testators.* It is thought that in consequence of probate being the act of a court it is in some cases improperly admitted as evidence of the death of the testator, *Rep. iv. 56 and note*—Suggestions, by the adoption of which better evidence of the death of parties might be obtained, *Rep. iv. App. Freshfield 100*.

*De Bonis Non.* See *Administrations*, 1.

*Decrees in Equity.* Decrees are only binding on the parties to a suit, *Rep. iv. 36*—A conclusive decree is made in equity when there is present purpose, *ib. 58*—Propositions for registering decrees in equity with respect to wills, *ib. 83*.

*Deeds and Wills.* Similarity between Anglo-Saxon deeds and wills, *Rep. iv. App. Gale 11 (62)*.

*Delegates, High Court of.* The High Court of Delegates is appointed by royal commission in each case, as a court of appeal from the Archbishops' Court, *Rep. iv. 48*—The Delegate Commission was instituted by Act 24 Hen. 8, c. 12, *Rep. iv. App. Gale 45 (500)*—History of the Court of the Delegates of the King in Chancery, *ib. 60 (607)*.

See also *Privy Council*.

*Delivery of Wills.* It has been supposed that in some cases equity will compel the delivery of a will to the heir, *Rep. iv. 37*.

*Demonstrative Legacy.* Nature of a demonstrative legacy, *Rep. iv. 6*.

*Deposit of Wills.* Suggestions for a place of deposit of wills during the lifetime of testators, *Rep. iv. App. Frost 103*.

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*De Rationabili Parte*, Writ of. Glanville's account of the occasion and exigency of this writ; proceeding thereunder, *Rep. iv. App. Gale* 38 (398).

*Derivative Representation*. Proposal that a derivative representation may be renounced before any act is done, *Rep. iv. 78*.

*Devisavit vel non*. If the heir dispute the validity of the will, an issue *devisavit vel non* is directed to a court of law; the heir may require this, *Rep. iv. 36*—If the verdict be not satisfactory another issue will be granted, *ib.*

*Devises and Bequests*. Proposition showing what freehold, copyhold, and leasehold property should be devisable by will, *Rep. iv. 80*.

*Devisors and Devisees*. Rule as to devisors and devisees according to the Roman law, *Rep. iv. App. Gale* 8 (18, 19).

*Diocesan Courts*. Jurisdiction of the archbishop's diocesan court, *Rep. iv. 45*—There is not any sufficient reason for continuing the diocesan courts, *ib. 55*—Number of diocesan or consistorial courts; their origin and extent, *Rep. iv. App. Gale* 66 (681).

*Discharge of Executors or Administrators*. Proposition for giving courts of equity power to discharge executors and administrators in the same manner as trustees may be discharged, *Rep. iv. 86*.

*Dispositions of Property*. Nature of the three different kinds of disposition by will, *Rep. iv. 6*—Inquiry into the subject of testamentary dispositions, *Rep. iv. App. Gale* 6 (1-4)—Subjects of disposition under the Roman law, *ib. 8* (17).

*Disseisin*. An estate lost by disseisin and recovered is not considered to have been altered so as to revoke a will, *Rep. iv. 27*.

*Distress*. Manner in which wills may be proved by distress or action for rent on the covenants in the lease, *Rep. iv. 35*.

*Distribution of Effects*. State of the law as regards distribution of the effects of intestates, *Rep. iv. App. Gale* 36 (380-399).

*Distributors*. A term by which religious persons obtained the power and office of executors, *Rep. iv. App. Gale* 29 (298).

*Donatio Mortis Causá*. Explanation of a disposition *donatio mortis causá*, *Rep. iv. 8*.

*Dunn & Wordsworth, Messrs.* Communication from Messrs. Dunn & Wordsworth, giving particulars as to administrations granted to the effects of a living person, and other fraudulent administrations; suggestion for proctors being made responsible for the identity of parties they introduce, *Rep. iv. App. 101*.

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*Ecclesiastical Jurisdictions*. It is difficult to ascertain how the church acquired the probate of wills, *Rep. iv. 42*—Other inconveniences besides those respecting probate arising from the various jurisdictions, *ib. 53*—Evils of the uncertainty of ecclesiastical jurisdiction, *ib.*—The ecclesiastical laws are not generally understood, and are in an unsatisfactory state, *ib. 62*.

Separation of the ecclesiastical from the temporal jurisdiction after the Conquest, *Rep. iv. App. Gale* 30 (301)—They were re-united, but not permanently, by charter Hen. 1, *ib. (310)*—Approbation of wills by bishops during the early years of probate, *ib. 31* (333)—Verification of the ecclesiastical progress from the state of the ecclesiastical records, showing the dates of copies and of original wills in various ecclesiastical courts, *ib. 32* (339)—Original establishment and other particulars of the ecclesiastical courts, *ib. 39* (418 *et seq.*).

Particulars as to archiepiscopal and cathedral peculiars, *Rep. iv. App. Gale* 48 (530)—Number of different descriptions of ecclesiastical peculiars, *ib. 69* (706).

State of the law as regards ecclesiastical distributions, *Rep. iv. App. Gale* 36 (380-390).—History of ecclesiastical process and proceedings, *ib. 45* (495-499).

See also *Appeals*. *Archidiaconal Courts*. *Archidiaconal Peculiars*. *Archiepiscopal Courts*. *Archiepiscopal Peculiars*. *Bequests to the Church*. *Bishops' Courts*. *Bishops' Peculiars*. *Clergy, The*. *Commissary Courts*. *Commissions of Superintendence*. *Consistory Courts*. *County and Hundred Courts*. *Diocesan Courts*. *French Wills*. *Hundred Courts*. *Improprate Rectory*. *Intestacy*. *Judges*. *Jury, Trial by*. *Legacies*. *Officers of Ecclesiastical Courts*. *Ordinary Courts*. *Peculiars*. *Prerogative Court*. *Prohibitions and Injunctions*. *Reformation, The*. *Spiritual Jurisdictions*.



**Ejectment.** Manner in which wills have to be proved in actions of ejectment, *Rep. iv. 34*—There is no bar to the repetition of ejectment except the Statutes of Limitation and the interference of equity, *ib. 35*—An heir is not entitled to a decree where he can bring an ejectment, *ib. 36*.

**Eldon, Lord.** Statement made by him that the Legislature ought to make some regulation as to the disposition of personal property, *Rep. iv. 15, note (e)*.

**Election.** The doctrine of election considered, *Rep. iv. App. Wellbeloved 3*.

**Elfric, Bishop.** Extract from the will of Elfric, a bishop, *Rep. iv. App. Gale 15 (92, 93)*.

**Enneawe's Widow.** Record of proceedings at a shire court, and of the nuncupative will of Enneawe's widow there published; remarks on the record, *Rep. iv. App. Gale 16 (98, 99)*.

**Equitable Interests.** Equitable interests in copyholds are devisable as the legal estate would be if a surrender were made, *Rep. iv. 10*—Equitable interests in customary freeholds are devisable like the legal estate, where it may be devised by means of a surrender; and so where the legal estate is not devisable like freeholds, *ib. 12*.

See also *Legal and Equitable Estates*.

**Equitable Revocations.** Law as to revocations by contract in equity, *Rep. iv. 26*.

**Equity, Courts of.** See *Chancery, Court of.* *Courts of Equity.*

**Estate.** See *Absolute Estate.* *Chattels.* *Contingent and Future Estates.* *Copyhold and Customary Estates.* *Customary Estates.* *Equitable Interests.* *Exchange.* *Fee Simple.* *Feoffments.* *Fines and Recoveries.* *Freehold Estates.* *Future Rights.* *Incorporeal Hereditaments.* *Leasehold Estates.* *Legal and Equitable Estates.* *Legal Interest.* *Partnership Property.* *Personal Estate.* *Property.* *Pur autre vie.* *Real Estate.* *Subsequently acquired Estates.* *Surrender of Copyholds.*

**Eton College.** The jurisdiction of proving wills was granted by the Crown to Eton College in the 19th Hen. 6, *Rep. iv. 51*.—See also *King's College, Cambridge, and Eton*.

**Evidence.** The evidence of the attesting witnesses will be liable to be contradicted by other evidence, *Rep. iv. 19*—The objections relative to the qualification of witnesses to wills are applicable to the general rules of evidence, *ib. 20*.

Mode of giving a will in evidence, *Rep. iv. 35*—Effect of the probate as evidence in the temporal courts, *ib. 38*—Consideration, whether it would be expedient to make a registered will conclusive evidence in actions and suits for rent and covenant and charges on land; insurmountable objections to such proposal, *ib. 57*.

**Examination of Witnesses.** See *Vivâ voce Examination*.

**Exchange.** In case of an exchange, the estate received in exchange will not pass by the will, *Rep. iv. 27*.

**Excommunication.** Parties against whom it might be issued; its effects; its abolition, *Rep. iv. App. Gale 45 (496 et seq.)*.

**Execution of Wills.** Wills must be made in some cases without the assistance of lawyers, *Rep. iv. 3*—The different rules relating to the mode of execution of wills considered, *ib. 4*—Every combination of the modes of execution and other requisites are occasionally prescribed by different powers of appointment, *ib. 12*—Recapitulation of the various rules for the execution of wills of different descriptions, *ib.*—Inconveniences of the variety of rules for the execution of wills, *ib. 13*—There is no good reason for any distinction in the form of executing different wills, *ib.*

Rule with regard to the execution of wills under the Roman and civil law, *Rep. iv. App. Gale 8 (26-32)*—Of the execution of wills under the canon law, *ib. 9 (44-52)*—Particulars as to the execution of wills and legatory jurisdiction of the county court in the time of the Anglo-Saxons, *ib. 20 (144-147)*.

Proposal that a simple form of execution should be required for all wills, with a few exceptions, *Rep. iv. 14*—Proposed uniform rule for the execution of wills, &c. *Rep. iv. App. Gale 81 (760-771)*.

See also *Attestation of Wills.* *Form of Wills.* *Formalities.* *Freehold Estates.* *Guardians.* *Mistakes.* *Personal Estate.* *Real Estate.* *Re-execution of Wills.*

#### EXECUTORS AND ADMINISTRATORS:

1. *Former and present state of the Law with respect to them.*
2. *Propositions for its Amendment.*

The

**EXECUTORS AND ADMINISTRATORS—continued.**

1. *Former and present state of the Law with respect to them :*

The property does not vest in the legatees until the executor has assented, or where there is no executor, the administrator, *Rep. iv. 6*—It is doubtful whether executors or administrators can be special occupants of incorporeal hereditaments, *ib. 9*—Effect of the probate as evidence with respect to the authority of the executor, *ib. 38*—Executors are obliged to prove wills of personalty, or renounce, *ib. 39*.

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Proposition with regard to registration of wills by executors subsequently intending to act, *Rep. iv. 32*—There are some differences in the laws relating to executors, administrators, and trustees, which it would be advisable to abolish, *ib. 76*—Proposal that the executor of an executor who dies without having registered, should be the personal representative, *ib. 77*—Also, that no assurance by an executor shall be valid if there be an administrator, or if he die without having registered, *ib. 79*.

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**Exeter, Diocese of.** In this diocese the peculiars consist of thirty-seven parishes, *Rep. iv. 49, note (b)*.

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**Fabricated Wills.** See *Forgery of Wills*.

**Fee Simple.** The absolute ownership in land was subject to testamentary disposition before the Conquest, but was not devisable under the feudal system, except in Kent and other places where the Saxon privileges were preserved by custom, *Rep. iv. 4*—Mode of execution of will required to pass freeholds in fee simple, or equitable estates in customary freeholds, *ib. 12*—State of the law as to the revocation of wills devising freehold estates in fee simple, *ib. 25*—Wills of freeholds in fee simple do not require to be proved unless disputed, and in many cases final decisions cannot be obtained, *ib. 34*.

**Fees.** Particulars as to the fees of testamentary courts, *Rep. iv. App. Gale 80 (745-748)*.

**Feoffments.** A feoffment by a testator to the use of himself, or where the use results to him, will operate as a revocation of his will, *Rep. iv. 27*.

**Feudal Law.** Particulars as to the probates of testaments under the feudal law, *Rep. iv. App. Gale 21 (170-175)*.

**Feudal Succession.** Principles of the feudal succession, *Rep. iv. App. Gale 22 (179)*.

**Fines and Recoveries.** A fine or recovery to strengthen title, or made expressly to give effect to a will, will operate as a revocation of it, *Rep. iv. 27*.

**Forgery of Wills.** Circumstances usually attendant on the fabrication wills, *Rep. iv. 17*—Forgery is not the only nor by much the most usual question affecting the validity of a will; two witnesses afford a greater protection against forgery than one, *ib.*

**Form of Wills.** Wills in exercise of powers may be authorized to be made, unless by the owner, without any forms; if no form is mentioned the will must be executed according to the Statute of Frauds, *Rep. iv. 12*—Difficulties in the form of wills arising from the rule of equity as to money directed to be laid out in land, or as to land directed to

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be converted into money, *Rep. iv. 14*—No unnecessary forms should be required in the execution of wills, *ib.*—Advantages and disadvantages of the present different forms considered, *ib.*—The same property in some cases requires, under different circumstances, a different will; it is doubtful in many cases what form of will is required, *ib.*

The question whether there should be any exception to the general rule as to the forms of wills considered, *Rep. iv. 21*—Forms of wills according to the Catholic standard, particularly as to testators' bodies and souls, *Rep. iv. App. Gale 27 (273-275)*—The solemn commencement of wills was not general until the making of wills passed into the hands of notaries and proctors, *ib. (277)*—Consideration of the present state of the law of wills, as to form, *ib. 51 (540)*.

See also *Language of Wills. Preparation of Wills.*

*Formalities.* The question considered whether additional formalities should be required in any cases, *Rep. iv. 22.*

*Fraud.* Equity will compel discovery for either party if fraud is alleged against the other, *Rep. iv. 37*—Proposition that courts of equity shall have jurisdiction to set aside a will on the ground of fraud, *ib. 69. 83.*

See also *Forgery of Wills. Nuncupative Wills.*

*Freehold Estates.* The forms required for the execution of wills of freehold estates are too complicated, *Rep. iv. 15*—All freehold estates are devisable, except estates in joint tenancy, estates tail, and in *quasi* entail; it is not expedient that these should be devisable directly, *ib. 23.*

*French Wills.* Probate of French wills, until the fourteenth century, was an ecclesiastical matter; it was then taken away, *Rep. iv. App. Gale 21 (172).*

*Freshfield & Son, Messrs.* Communication from Messrs. Freshfield & Son as to the reception of probates at the Bank as evidence of the death of testators; as to frauds on the Bank; the loose manner in which probates are granted; and the evils of the law as regards *bona notabilia*, *Rep. iv. App. 98-100.*

*Frost, Charles.* Communication from Charles Frost, of Hull, suggesting a place of deposit for wills during the lifetime of testators, *Rep. iv. App. 103.*

*Funds, Public.* Money in the funds is devisable under certain statutes by a will attested by two witnesses, but can pass in effect by any will, *Rep. iv. 9*—Provisions required to be attended to in the execution of wills for passing money in the funds, *ib. 13*—As to funded property wills are revocable as with respect to other personality, *ib. 30*—Probate must be obtained of wills with respect to money in the funds, *ib. 40.*

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*Funeral Expenses, Debts, &c.* Powers and duties of executors and administrators as regards the payment of debts, funeral expenses, &c., *Rep. iv. 6.*

*Future Rights.* Upon considering the subject of limitation of actions, it was thought that acquiescence or collusion of a person entitled to a present partial interest should not be allowed to defeat rights to future interests, *Rep. iv. 58*—The mode in which the right is acquired, or the nature of the property, does not afford a reason for any distinction, *ib.*—Where a right ought not to be barred if created by deed, it ought not to be barred when created by will, *ib.*—Where it ought not to be barred if of the nature of realty, it ought not to be barred when of the nature of personality, *ib. 59*—Where a right cannot be barred by the neglect, &c. of a tenant for life, it ought not to be barred by the neglect, &c. of an executor, *ib.*

## G.

*Gale, Samuel.* Communication from Samuel Gale, of Lincoln's Inn, containing detailed information on the state of the law as to wills, viz.: the law of parental nations; progress of the law; present state of the law, and attempts at reformation, *Rep. iv. App. 6-90.*

*Gavelkind and Borough English.* Succession according to these customs, *Rep. iv. App. Gale 22 (178).*

*General Legacies.* Nature of general legacies, *Rep. iv. 6.*

*General Occupancy.* The Statute of Frauds abolished general occupancy; questions which have arisen upon this provision of the statute, *Rep. iv. 9.*

*General Register of Wills.* If a general register be established, and probate be retained, wills affecting real property will have to be registered twice, *Rep. iv. 56*—Proposition for establishing a general register office for wills in the metropolis, *ib. 81.*

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*Germany.* The ancient Germans made no wills, *Rep. iv. App. Gale 11 (58).*

*Guardians.* Wills for appointing testamentary guardians are required by 12 Car. 2, c. 24, to be executed in the presence of two witnesses, *Rep. iv. 12*—Mode in which wills must be executed in order to appoint a guardian, *ib. 13*—The appointment of guardians may be revoked by parol, another appointment, or by implication, *ib. 30*—Wills with respect to the appointment of guardians are not within the jurisdiction of the courts of probate, *ib. 41.*

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*Hale, Sir Matthew.* His remark as to the litigation caused by questions arising on wills, *Rep. iv. 3.*

*Hardwicke, Lord.* He considered that the decisions allowing witnesses to attest wills at different times went too far, and opened a way to frauds, *Rep. iv. 18, note.*

*Heirs at Law.* In a suit in equity to establish a will, the heir must be a party, and the evidence of the witnesses taken, *Rep. iv. 36*—A will cannot be established unless the heir be found, *ib.*—The rule of equity which requires in all cases the heir to be a party, and the will established before the trusts are carried into execution, should be discontinued, *ib. 68.*

Rule that a devise to the heir is void; litigation occasioned by it, *Rep. iv. 74, 75*—Proposal, that the rule be abolished, and the heir take under the will, *ib. 75*—Proposition for heirs taking as devisees, and not by descent, in certain cases, *ib. 85.*

*Honor and Manor Peculiars.* These peculiars are exempt from the jurisdiction of the Prerogative Court, *Rep. iv. 52, and note.*—See also *Manors and Manor Courts.*

*Hooper, Thomas.* Copy of the will of Thomas Hooper, proved in the Court of Hastings, London, in 1692, *Rep. iv. App. Tyrrell 97.*

*Hundred Courts.* Formerly the rural dean or archdeacon sat with the Hundredary in the Hundred Court, *Rep. iv. 43.*—See also *County and Hundred Courts.*

*Huphellow, Henry le.* Extract from his will, proved in the Court of Hastings, 43 Hen. 3, *Rep. iv. App. Tyrrell 94.*

*Hustings, Court of, London.* Antiquity of the Court of Hastings; proof of wills therein; dates of the earliest and latest will proved therein, *Rep. iv. App. Tyrrell 93, 94.*

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*Implied Revocations.* State of the law as to implied revocations not mentioned in the Statute of Frauds, *Rep. iv. 26*—Implied revocations, from a conveyance or alteration of the estate, will be abolished by allowing subsequently acquired estates to pass, *ib. 31*—Implied revocations, by an intended alteration of the estate, should be prevented, *ib.*

*Improprate Rectory Peculiars.* Peculiars belonging to impropriate rectories are not within the jurisdiction of the Prerogative Court, *Rep. iv. 52.*

*Incorporeal Hereditaments.* As to incorporeal hereditaments, the Statute of Frauds continued the estate which previously determined when there was no special occupant, *Rep. iv. 9.*

*Inconsistent Wills.* An inconsistent will or codicil need not be signed in the presence of the witnesses, but is held to be a revocation of a former will, *Rep. iv. 25.*

*Indexes.* The practice of indexing separately does not appear to have come in use before the seventeenth century, *Rep. iv. App. Gale 32 (339).*

*Infants.* Infants and married women can, in some cases, dispose of property by will, *Rep. iv. 23*—Proposition, that no wills be made by infants, and no will be made by a married woman, except under a power or as to personalty, with the husband's consent, or to continue an executorship, *ib.*—Proposition as to the validity of wills of infants and femes covert, *ib. 80.*

*Informal and Imperfect Wills.* Questions on wills arise from the law not requiring them to be framed with the same technical precision as is required for deeds; remedy proposed, but not recommended, *Rep. iv. 3*—In what cases imperfect wills are good, *ib. 7*—It is unnecessary to impose all the requisites of the Statute of Frauds, but informal wills should be abolished, *ib. 16*—A regulation that the signature to a will should always be at the foot would be advantageous, in order to put an end to imperfect papers, *ib.*—Consideration of the question as to cases where it is impossible to make formal wills, *ib. 21*—It is not expedient on the whole to permit informal wills to be made in cases of emergency, *ib. 21, 22*—As, by the proposed alterations, there will be no informal papers, probate will not be required for them, *ib. 56.*

*Inhibition.* Effect of inhibition on the inferior courts during visitation by the bishop, *Rep. iv. 46*—Reasons why the present usage of inhibition and appeal cannot be taken as conclusive evidence that a peculiar is archidiaconal or episcopal, *ib. 50*.

*Injunctions.* After a will has been established, an injunction will be granted to prevent any person bound by the degree from disputing the will at law, *Rep. iv. 36*.

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*Instruments Inter Vivos.* Contents and arrangements in Saxon instruments *inter vivos*, *Rep. iv. App. Gale 12 (84)*.

*Interested Witnesses.* The disqualification of witnesses by taking interests under the will, is removed by 25 Geo. 2, c. 6, *Rep. iv. 19*.

*Intestacy.* Probate of wills has always been connected with the administration of the effects of intestates, *Rep. iv. 43*—It does not appear how the administration of the effects of intestates was obtained by the Church, *ib.*—Roman law with regard to the administration on intestacies, *Rep. iv. App. Gale 9 (34)*—State of the canon law as to administrations on intestacy, *ib. 10 (53)*—Particulars as to succession on intestacy under Anglo-Saxon and feudal law, *ib. 22 (176-179)*—General state of the law as regards intestacy, administration, and distribution, *ib. 35 (361-379)*. 54 (562).

See also *Distribution of Effects*. Normans, The.

*Inventories.* Origin of inventories of testators' or intestates' goods; state of the law with regard to them, *Rep. iv. App. Gale 38 (400-405)*—The law with regard to inventories and accounts, in its present state, considered, *ib. 55 (570)*.—See also *Accounts*.

*Issues at Law.* When the will is disputed, an issue should be directed when the court might think fit, *Rep. iv. 66*—Proposition for regulating the direction of issues to try the validity of wills of personal property, *ib. 82*.

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*Judges.* History of the conduct of ecclesiastical judges and officers, and of fees, &c. *Rep. iv. App. Gale 44 (483-494)*.

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*Mistakes.* The different rules of law for the execution of wills occasion mistakes, which defeat proper intentions, *Rep. iv. 13.*

*Monasteries.* Some of the present lay jurisdictions belonged to monasteries, and copies of Crown grants to some are still extant, *Rep. iv. 51.*

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1. *Present state of the Law with respect to Wills of Personal Property.*
2. *Propositions for its Amendment.*

1. *Present state of the Law with respect to Wills of Personal Property:*

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2. *Propositions for its Amendment.*

1. *Present state of the law with respect to granting Probates:*

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## REGISTRATION OF WILLS:

1. *Proposition for a General Registry; Advantages thereof.*
2. *Whether Registration would supersede the necessity for Probate.*

1. *Proposition for a General Registry; Advantages thereof:*

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1. Present State of the Law with respect to Revocation:

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**Statute of Wills.** The statute 32 Hen. 8, c. 1, explained by 34 Hen. 8, c. 5, empowered the devise by will in writing of all lands held in socage, and two-thirds of those held in knight service, *Rep.* iv. 5—Requirement of the statute, that wills should be committed to writing in the lifetime of the testator; greater latitude given by the courts, *Rep.* iv. *App.* *Gale* 26 (264, 265)—The Statute of Wills did not make any provision for the registration or proof of wills, nor has that defect ever been supplied, *ib.* 33 (344).

**Strange, Sir John.** His opinion, that allowing witnesses to wills to attest at different times was destructive of the barriers erected by the Statute of Frauds, *Rep.* iv. 18, note (b).

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### TESTAMENTARY LAW AND JURISDICTION :

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2. *Former and present State of the Law.*
3. *Constitution and History of Testamentary Courts.*
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- Testamentary Writings.** Rules as to testamentary writings, *Rep. iv. App. Gale* 26 (267).
- Testators.** State of the law as to persons by whom wills may be made, *Rep. iv. 22*—General law as to the capabilities and incapacities of testators, *Rep. iv. App. Gale* 25 (246-254)—Present state of the law of wills with respect to persons as agents and objects, considered, *ib. 49* (538).
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- Welsh Judicature.** The Welsh laws did not permit a father to make a will, *Rep. iv. App. Gale* 11 (57)—Nature of the succession among the Britons in Wales, *ib. 22* (177).
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*William the Conqueror*. Abstract of the Conqueror's nuncupative will, *Rep. iv. App. Gale 28 (285)*.

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#### WITNESSES:

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2. *Whether Witnesses to a Will are necessary; Number that should be required.*
3. *Whether expedient that Witnesses should be present at the Execution of a Will.*
4. *Examination of Witnesses in Courts of Law and Equity.*

##### 1. *Qualification of Witnesses:*

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